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SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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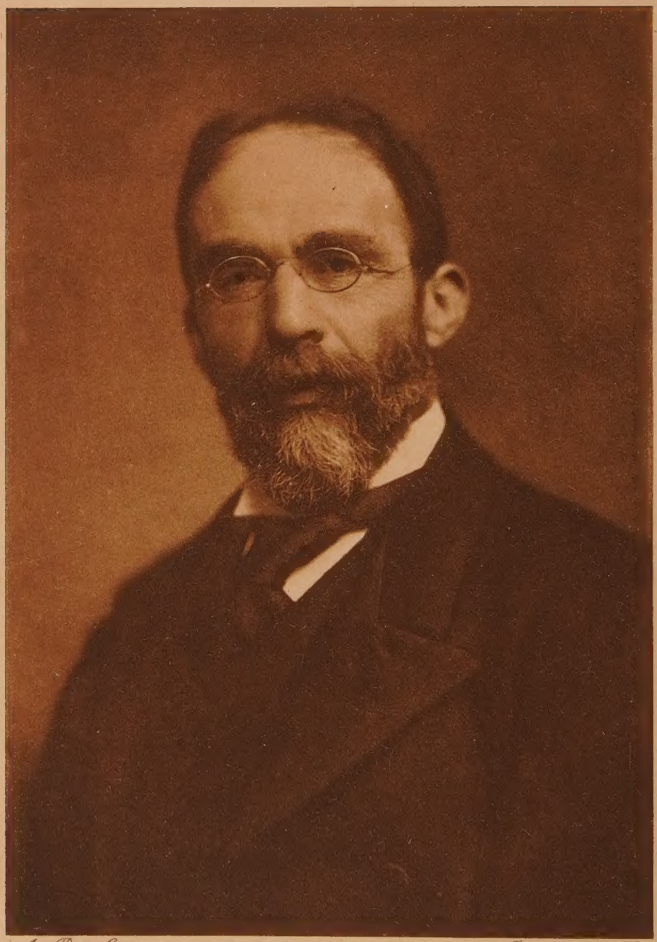

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Ernest J. Schuster

DR. ERNEST SCHUSTER.

THE portrait on the opposite page is that of Dr. Ernest Schuster. To our readers he is well known as a frequent contributor; and in this number is an interesting article by him on a subject of great present importance. In these days the comity of science means more than it ever did. There is free exchange of knowledge and ideas between nations, readiness such as was never before known to put the experience of one country at the disposal of others, a disposition to give and to receive, to teach and to be taught. There have been times when English lawyers were indifferent to all foreign legal systems, and noted with something like amazement—one might almost say pity—curiosity on the part of other nations as to any legal systems except their own. That particularism in jurisprudence has passed away. Gierke, Brunner, and Esmein are read here. Maitland's merits have been recognised in Germany. There is a widespread desire to be acquainted with foreign systems of law, and to profit by them. Hence need such as never before existed for highly trained intermediaries between English and foreign law; for jurists who can speak with knowledge as to both. Dr. Schuster is peculiarly in that position. His literary work has greatly helped to make Englishmen understand German law and Germans to understand English, and thus to promote the work of unification of law going on among all civilised countries, and described by Lord Justice Kennedy in this number of the Journal. It would be ungracious not to mention in these pages one fact as to Dr. Schuster. He has been a generous benefactor to the Society. He has made arrangements by which a most valuable library containing works on foreign and comparative law becomes the property of the Society.

THE UNIFICATION OF LAW.[1]

[*Contributed by* The Rt. Hon. Lord Justice Kennedy.]

When I had the honour of being invited to be present this afternoon and to address a few words to you at this Annual Meeting of the Liverpool Board of Legal Studies, I obtained from the Hon. Secretary a list of the subjects upon which addresses had been delivered on like occasions in past years, in order that I might not unwittingly choose some theme which had been handled already. In that list I saw the titles of two addresses delivered to this assembly some years ago; one by my friend Sir John Grey Hill on "Efforts to establish Uniform Maritime Law"; the other on "Conflict of Laws" by one whose premature death not only saddened a multitude of warm and admiring friends, but deprived our profession of one of its acutest and soundest intellects—His Honour Thomas G. Carver.

I purpose this evening for a little space to enter the same region of juristic interest, taking, however, a wider survey than the consideration of maritime law only permitted to Sir John Grey Hill; and a more hopeful view than the title of Laws in Conflict is calculated, in the first instance at any rate, to impress upon the explorer of international relations.

Let me begin by a brief historical retrospect. It is useful, I think, if one would rightly apprehend the present position of international movements, to try to trace the genesis and the operation of the various influences, other than conquest and force of arms, which have been evolved in the past out of the progress of civilisation in Europe, and have made on the one hand for congruity and cohesion, and on the other hand for difference and disintegration. The breaking up of the Roman Empire of the West which had held together so many communities differing in race and language, and animated by traditional hostility, left behind it two great welding or consolidating powers—Latin Christianity and the Roman Law. The ecclesiastical system, formed and administered by the Papacy, gradually, as time went on, became a great and effective social bond throughout Western Europe, uniting men and peoples of different nationalities and tongues by the creation and the furtherance of a supreme common interest.

The cosmopolitan force exhibited itself between the twelfth and sixteenth centuries in various ways, warlike and peaceful; such *e.g.* as the co-operative

[1] An address delivered before the Liverpool Board of Legal Studies

enterprise of the Crusades in the earlier part of this period, and in the later part the growth of international commerce, which brought Lombard merchants to the City of London and Flemish and other foreign dealers to our own English fairs. The universality of the Church fostered and maintained Latin as the lingua franca of all educated men, who thus could and did communicate with and understand each other during the Middle Ages to an extent which would not otherwise have been possible, and which was greatly lessened when this link ceased to exist.

But besides the unifying force of a common Church and a common tongue, there grew up in regard to the great continental communities *inter se* a further tie which has continued to this day, in the adherence of their legal systems to the Roman Law—the law which is the imperishable monument of the fitness of Ancient Rome for the government of the ancient world. It obtained a hold even in Northern Britain. It was adopted in Scotland in the reign of King James the Fifth, and in Scotland it forms still the basis of the legal system.

But the Roman or Civil Law, which connected the States of the Continent *inter se*, operated as an element of dissociation between all those States and England, for in England the Common Law proved itself too strong a competitor. There were teachers of the Civil Law and its offshoot the Canon Law in the Universities as early as the reign of King Stephen. Vacarius the Lombard lectured at Oxford on the Corpus Juris. But the Common Law held the King's Courts. There can be no question that the law of Rome has had a share in the making of the law of England. But it was only in the tribunals which had cognisance of ecclesiastical and maritime causes that the principles and rules of the Civil Law and the Canon Law obtained recognition.

The common bond of a universal Church was destroyed by the Reformation, and I think that the same cause contributed to the gradual disuse of Latin as a common means of oral and written communication. The Reformation evolved in a long era of social and political disintegration. Religious differences accentuated national jealousies, cloaked military and dynastic ambition, and practically divided Western Europe into two hostile camps. The tide of intolerance ebbed very slowly. It was not until the end of the seventeenth century that an economic cause—the growth of international and especially over-sea commerce—began to draw nations together again into the intercourse which is necessary for the development of a common understanding and the promotion of instituti ons for common advantage.

In spite of frequent disturbances of peace in Europe, this same economic cause continued, I think, to operate beneficially throughout the eighteenth century. The contemporaneous growth of the study and exposition of International Law by European jurists points to an increasing recognition of the moral duty and the expediency, on the part of all members of the family of civilised nations, of agreeing to conform, in international

relations, to the same principles, and to be bound by the same rules of conduct, and a recognition, also, of the practical possibility of such an agreement. But it was reserved for the nineteenth century to bring into being, through the marvellous discoveries of science, conditions of close and frequent intercourse between civilised nations, and, through that intercourse, to create in the minds of a large and increasing number of thoughtful men of all countries a sense of the need and of the practicability of assimilating, and in some directions at least of unifying, the methods and the machinery of the world's business. As I have said elsewhere, steam and electricity and the printing press have, as it were, drawn together the ends of the earth. Swift intercommunication, the facility of frequent personal intercourse, and the ceaseless interweaving of the devious and tenacious threads of commercial enterprise, have combined in the last century to teach the nationalities of the Western world the baselessness and the costliness of much of their old unreasoned and indiscriminate mistrust of all foreign institutions and foreign methods of procedure; and the eyes of many have been opened to discern the gain, both direct and indirect, moral and material, which would ensue if the machinery of those foreign institutions and their own could be brought into more harmonious co-operation.

Now there are two great matters in respect of which unification, if possible, would especially facilitate international intercourse, promote a good understanding, tend permanently to conserve peace, and greatly simplify the complexities of international commerce. The first of these is language. But I am afraid neither Volapuk nor Esperanto has come to stay, and that the prospect of a common language for the civilised world is even more remote than the prospect of the good time for which the poet sighs:

> "Ah! when shall all men's good
> Be each man's rule, and universal peace
> Lie like a shaft of light across the land?"

The second matter—and this it is to which I venture to invite your consideration to-day—is law.

The certainty of enormous gain to civilised mankind from the unification of law needs no exposition. Conceive the security and the peace of mind of the shipowner, the banker, or the merchant who knows that in regard to his transactions in a foreign country the law of contract, of movable property, and of civil wrongs is practically identical with that of his own country. Or, to put the same thing in the concrete, that the Courts of the foreign country would deal with questions arising out of collisions at sea, questions of salvage, limitation of liability, freight, mortgages, liens, insurance, agency, sale of goods, stoppage in transition, and bills of exchange (to take only some of the principal matters of mercantile interest) as they would be dealt with in his own country's Courts.

I hope I am not in error in believing that in the commercial world it is the trader's sense of security from risk which is the requisite basis of all enterprise and extension of business. But I do not think that the advocate of the unification of law is obliged to rely solely upon such material considerations, important as they are. The resulting moral gain would be considerable. A common forum is an instrument for the peaceful settlement of disputes which might otherwise breed animosity and violence. That is, as between nations, the *raison d'être* of The Hague Tribunal. Now, nations are only aggregations of individuals; and it appears to me to be reasonable to believe that if the individuals who compose each civilised nation were by the unification of law provided, in regard to their private differences or disputes abroad with individuals of any other nation, not indeed with a common forum (for that is an impossibility), but with a common system of justice in every forum, administered upon practically identical principles, a neighbourly feeling, a sincere sentiment of human solidarity (if I may be allowed the phrase) would thereby gradually be engendered amongst us all—a step onward to the far-off fulfilment of the divine message, "On earth peace, goodwill toward men."

So far, I have been referring to the unification of law in the departments of shipping and commerce. But I am far from meaning that the range of our ambition should be limited to efforts to unify the commercial and maritime law alone. The law of persons—the law, that is to say, which affects personal capacity and status—must not be left out of consideration. Viewed from the moral standpoint or the social standpoint, the present position, in regard to national divergence, of the laws of marriage—the essential conditions of its validity, its effect upon rights of property, and the grounds for its dissolution—is simply lamentable.

Is it not a striking fact that even within the limits of Great Britain and Ireland, as respects divorce, the divergence goes so far that grounds are recognised as sufficient for divorce in Scotland which are not admitted in England, while in Ireland a divorce, except by private Act of Parliament, cannot be obtained at all.[1] Ought it to be possible that a marriage which in point of the capacity of the parties and the formalities of the celebration is valid in the civilised Christian country in which it is solemnised and which no code of morals could condemn as *contra bonos mores*, may be declared null in another because one of the parties to that marriage is a citizen of that other country and has not conformed, in his marriage abroad, to a law requiring the consent of his family? Is it desirable, except perhaps in the case of a deserted wife, or a wife whose husband has so behaved that she is justified in living apart, that a decree of divorce (to be distinguished, of course, from decrees of judicial separation or alimony) should be pronounced by the Court of a country which is not the country of the

[1] Bryce, *Studies in History and Jurisprudence*, vol. ii. p. 382.

matrimonial domicile at the time when divorce proceedings are instituted? I doubt not that many have heard, as I have often heard, Americans deplore what has truly been designated the "lax laws of divorce and not less lax administration of them" in many parts, at any rate, of the United States. And in one of them—and not the least important—it was very recently, and for aught I know still is, the law that a woman, born a citizen of that State, can obtain a divorce from its Courts although neither the marriage was celebrated in that State nor has the matrimonial domicile ever been within its borders.

The practical questions still remain, Is the unification of law feasible? What, if anything, has been already done in that direction?

I am afraid that in regard to the personal law, so far as regards the most important questions of marriage and divorce, there is no immediate or even near prospect of success. Differences of traditional usage, religious and ecclesiastical discipline, and popular sentiment in regard to the rights and duties which are involved in the family tie, prevail so widely and are so closely cherished that any attempt to unify law in this direction by international agreement has at present a poor prospect of success. Touching marriage and divorce, Mr. Westlake—and there could be found no better judge of the situation—has written: "A unity as to marriage and divorce is as important as any topic I have mentioned, but there we touch the point in which modern civilisation has during three centuries been receding from unity, and perhaps will not rejoin it without passing through even greater diversity." The strong modern tendency on the Continent, and especially, I think, in Italy, to follow the principle of nationality rather than that of domicile in dealing with questions of private international law certainly tends greatly to aggravate the difficulties of unification in all matters in which personal capacity and status are involved. Indeed, what has been done in recent years in regard to this region of law must tend, I fear, rather to increase, so far as regards this country, its position of isolation. Official conferences on private international law were held at The Hague in 1893, 1894, and 1900. Among their results was the signature in 1902 of three conventions between twelve European States respectively on marriage, divorce, and the guardianship of minors. I share to the full the regret which my friend and colleague on the Bench, Sir Walter Phillimore, very forcibly expressed in a paper read at a Conference of the International Law Association at Antwerp a few years ago, that Great Britain abstained from taking any part in those Conferences. Where a number of equal and independent units have fused their differences in an agreement, it is justly difficult for a unit which has chosen to stand aloof from the discussion which produced the agreement afterwards to persuade them to re-open the matter in order that some views of its own may find a place or, at all events, impartial consideration in a resettlement.

In regard to the unification of maritime and commercial law, the position

is full of promise. At the present moment all the principal States of the civilised world are represented at an official conference which held sittings at Brussels in September last, and is, I believe, to reassemble again early this spring to consider draft Codes or "Projets" (1) on the law of salvage, (2) on the law of collisions at sea, and (3) on the limitation of shipowners' liability, which are the outcome, I am proud to say, of the patient and earnest labours, for several years past, of the International Law Association and the Comité Maritime International. These draft codes do not represent merely the results of the deliberations of British, American, and continental lawyers and jurists interested in the unification of law. They are the fruit of the collaboration with such lawyers and jurists of men of business who, though in no sense delegates, did, I hope and believe, in fact fairly represent the various departments of the mercantile and shipping world to which they belong. Knowing, as I think I am justified in saying that I do from our unofficial conferences, how few are the points of reasonable controversy, I cannot believe that the official conference will end in a barren interchange of national opinions. "Where there's a will there's a way"; and I venture humbly and earnestly to express the hope that neither my country nor any other of the countries concerned will obstruct the path to the attainment of a great common boon by clinging obstinately to theoretical symmetry, or look askance at a reasonable compromise, where national rules have differed. There was wisdom as well as nobility of thought in the sentence with which Dr. Sieveking made memorable the opening of the Bremen Conference of the Comité Maritime in September last: "The law of the ocean *may* be one, the law of the ocean *shall* be one." I will only add that in addition to three draft Codes or "Projets" now under official consideration, others—on the law of mortgages and liens, the law of bills of exchange, and the law of freight—are, in various stages of progress, being prepared by the unofficial international organisations to which I have referred.

If it is asked why the progress towards unification of law is so much more satisfactory in regard to the business side of human affairs, the answer is not, I think, difficult to find. As Mr. Bryce has pointed out, "The more any department of law lies within the domain of economic interest, the more do the rules that belong to it tend to become the same in all countries; for in the domain of economic interest Reason and Science have full play. But the more the element of human emotion enters any department of law, as for instance that which deals with the relations of husband and wife, or of parent and child, or that which defines the freedom of the individual as against the State, the greater becomes the probability that existing divergences between the laws of different countries may in that department continue, or even that new divergences may appear." [1]

Now, I fear that I may have already trespassed too far upon your

[1] Bryce, *Studies in History and Jurisprudence*, vol. i. p. 144.

patience. It appeared, however, to me that I might not unfitly embrace the opportunity which your kindness has given me, of putting before some of those who take an active part in the business life of one of the greatest centres of commercial industry and enterprise in the British Empire, the claims which the effort to unify law has upon all lovers of true and righteous progress, and particularly upon those for whom the well-being of commerce in its international relations has a personal and practical interest.

May I, in conclusion, address a few words of counsel, in connection with my subject, to those among my audience who are students of law?

Early in this address I very briefly drew attention to the fact that except in South Britain—that is to say, except in England and Wales and Ireland—the Roman Law was adopted generally throughout Christian Europe. That law "more or less modified by national or local family customs or land customs, and by modern legislation, prevails to-day in all the European countries which formed part either of the ancient or of the mediæval Roman Empire."[1] It prevails within the British Empire to-day in Quebec, South Africa, Mauritius, Ceylon, and British Guiana, subject, of course, to additions and alterations through modern British ordinances or local legislation. Practically it may be said with truth to divide the whole civilised world with English law. Now, you will agree that in order to unify law we must try to understand and appreciate that law, different from our own, which is in force in those States whose agreement to a common code we labour to secure. There is not much use in trying to persuade a man to prefer our system to his, or to modify his own, if he sees that we do not understand what the principles and rules of his system are. I venture, therefore, to plead with you, on this practical ground, for the study of the Roman Law. Not that the study of Roman Law needs any such ground for its justification. The study of law, wrote Savigny, is by its very nature exposed to a double danger: that of soaring through theory into the empty abstractions of a fancied law of nature, and that of sinking through practice into a soulless, unsatisfying handicraft. Roman Law, if we use it aright, provides a certain remedy against both dangers. It holds us fast upon the ground of a living reality; it binds our juristic thought on the one side to a magnificent past, on the other to the legal life of existing foreign nations, with whom we are thereby brought into a connection wholesome both for them and for ourselves.[2] If any one of those students whom I am now addressing doubts whether as part of the intellectual training which will best equip him for his profession he ought to include Roman Law amongst his studies, I would advise him strongly to read the admirable Inaugural Lecture of 1871, and the equally admirable Valedictory Lecture of 1893, which our present Ambassador to the United States delivered when Regius Professor of Civil Law at Oxford, and

[1] Bryce, *ubi sup.* p. 85.

[2] Quoted by Mr. Bryce, *ubi sup.* vol. ii. p. 501.

in the earlier of which he quoted the passage from Savigny's *System of Modern Roman Law* which I have just cited. To-day I plead for that study as one which will fit the student for useful service in the ranks of the band of workers for the unification of law, and thereby for the achievement of a signal service to our country and to the world at large.

THE DEATH OF LOMBROSO.

[*Contributed by* PROFESSOR COURTNEY KENNY.]

LITTLE more than a year ago—in October 1908—Cesare Lombroso wrote of himself as being "near the end of a career in which I have been a leader in new movements of thought; near the close of a life passed in contending for great ideas." The prophecy has come true all too soon. That brave and persistent career of conflicts is over.

Yet its many years of active struggle cannot be said to have been crowned by final triumph. It was, as Lombroso himself went on to say, "a life richer in controversies than in conquests." For the theories of criminology which he and compatriots of his, like Ferri and Garofalo and Colajanni, disseminated so quickly amongst the younger jurists of the Latin lands, did not find equally rapid acceptance in the countries of Teutonic speech. And indeed such measure of acceptance as they there met with is already on the decline. Lombroso lived long enough to see the tide ebbing. On his native soil, no doubt, Italian patriotism may be trusted to sustain for a long time to come the popularity of the Italian criminologists. And the supposed antagonism between their doctrines and the teaching of Catholicism will probably long suffice to commend them to the acceptance of law schools so hostile to the Church as are those of France and Spain and Brazil. But in the cooler latitudes of Leipzig or London or Boston, there is less reluctance to test the brilliant Italian theories by the results of old experience, and to discount their sweeping generalisations by patient analysis.

Yet let us gratefully acknowledge that even on the shores where the tide has ebbed the farthest, it has left behind it treasures of great price. Lombroso's exaggerations are dismissed; but the dismissal throws into relief many a novel fact which we owe to him, rich in practical suggestions. So is it with every new school of thought as it arises and passes on. To the eighteenth-century jurists we owe a lasting debt for having rationalised and humanised criminal punishment; although we have outgrown their naïve belief that those reforms would render punishment a universal panacea for crime. And if we decline to follow those nineteenth-century thinkers whom Lombroso trained or inspired, in their efforts to discover in every cracksman or pickpocket a physiological anomaly, and to resolve criminal law into a branch of medicine, we still shall hold them in enduring honour for having

taught us the necessity of "individualising" our penal discipline to the circumstances of each particular offender, so that the shoe shall always fit the foot. Former lawyers—says Van Hamel epigrammatically—bade men study Justice, but Lombroso bids Justice study men. Each precept is good. But better still is the combination of the two.

The jurists of ancient Italy laid the foundations of the law of modern Europe; and in Italy again, in the eighteenth century, Beccaria and Filangieri began the movement which gave that law a new spirit. She was thus the fitting home for yet another great departure. The old criminal lawyers, says Ferri, thought of the guilt, but Beccaria thought of the man. There was need of yet a third school which should devote itself to studying the man as guilty. In Italy, again, it was that this further juristic advance began. At the Prisons Congress of 1870 at Cincinnati, two years before Lombroso's earliest book on Criminology, his compatriot Beltrani-Scalio gave out the watchword, "Study the individual offender"; ("Studiare il delinquente. Ecco il besogno"). Lombroso drove home this injunction; and it is his great service to mankind.

So far back as 1822 a great pioneer of evolution, Geoffroy St. Hilaire, had sent forth from the Jardin des Plantes his famous treatise on Monsters, which disclosed the scientific causes of anatomical malformations. Two generations later, Lombroso, in the pages of *L'Uomo Delinquente*, essayed to create an equally scientific teratology of the abnormalities of men's moral nature. It was but a step further along St. Hilaire's path of evolution, which Darwin meanwhile had trodden smooth and wide. And like St. Hilaire and Darwin, Lombroso laboured patiently at the accumulation of facts. True, he did not scruple to say that "perhaps the strongest argument in favour of my theories is that they have been adopted by such men of genius as Zola and Daudet and Tolstoi; whose field of work lies so far away from my own." But the fact that his theories were crowned by the approval of many a brilliant novelist was far less important than the fact that they had been elaborated by many a year of painstaking observation.

Born in 1835, of a Jewish stock, Lombroso was educated for the medical profession; and, after some years of service as a surgeon in the Italian army, undertook work in a lunatic asylum. Here he introduced—a novelty then in Italy—the practice of noting carefully the physical peculiarities of patients: their weights; their skulls, teeth, nails, eyes, ears, skin; their muscular strength, their sensibility to pain. He was ridiculed in consequence as "the scales-and-weights surgeon" (l'alienista della stadera). The study of insanity soon suggested that of crime. His habit of careful attention to minute facts he carried into criminology. Hence arose his first jural treatise, *Anthropometry of* 400 *Venetian Criminals*, published in 1872. By 1892 he could boast of having already made personal notes on no fewer than twenty-five thousand delinquents. In the prisoners whom he examined, Lombroso was struck by the frequent recurrence of certain characteristics—as, for instance,

a small cranial capacity, a small weight of brain, a great length of arm, a retreating forehead, a protruding under-jaw; a scanty beard and a thick head of hair; projecting ears and squinting eyes; a tendency to left-handedness; a lessened sensitiveness to pain, but a more than doubled susceptibility to climatic, magnetic, and meteorological changes. To trace in a man's body some revelations of his mind was nothing new. Homer had been careful to fit mind and body together when creating Thersites (ii. 217):

> His figure such as might his soul proclaim;
> One eye was blinking and one leg was lame,
> His mountain-shoulders half his breast o'erspread,
> Thin hairs bestrewed his long mis-shapen head.

But Lombroso took up the study, and pursued it no less systematically—and far more comprehensively—than Lavater himself. By putting together the anatomical and physiological abnormalities which he had noticed in his prisoners, he constructed a specific type of human being which he pronounced to be criminal—the "Delinquente nato" (as Ferri in 1880 named it). "There are more peculiarities," he declared, "in the skull of the criminal than in that of the lunatic." To this type he felt satisfied that most great offenders must belong. Its characteristics involved so much which was suggestive of the ape that it was an easy inference to regard them as returns to an ancestral animalism. But, as time went on, Lombroso laid less and less stress on this atavistic theory; though he remained convinced, with Maudsley, that, just as true poets are such by birth, so are true criminals.

This general type once discovered, Lombroso proceeded to differentiate other types more special. Hump-backed men, he became convinced, are rarely murderers; but they are apt to have a penchant for forgery and for incendiarism. Amongst highwaymen he found dark eyes and thick black hair to be common; whilst mere thieves had grey eyes and were usually men of less height and weight and strength than the highwayman. Lombroso might, however, have paused to consider whether these puny thieves are not withheld from emulating the exploits of Dick Turpin rather by mere muscular inaptitude than by any innate psychical destiny.

The study of one extreme suggested the study of its opposite. He turned from these degenerates to the vanguard of our race. But here a surprise awaited him. In his *Uomo di Genio* he disclosed it: "My results prove that genius, the highest product of evolution, possesses many retrogressive characteristics; whilst, on the other hand, the criminal, so many of whose peculiarities are retrogressive, manifests others which are amongst the latest results of evolution, whether physical, like deficiency of molar teeth, or mental, like the craving for novelty."

Many of the characteristics which are innate in born criminals may in other men be acquired gradually through vice or disease, as in habitual inebriates. In both classes the offender is beyond reformation; and society,

in its own defence, must send him into permanent seclusion as "unassimilable." But beyond these incorrigibles there lie other groups; less interesting to Lombroso, but surely of far greater numerical importance. There are those whose mental taint, though often innate, does not amount to insanity: the epileptic, the neurasthenic, the weak-minded. There are those, again, who yield easily to impulse, the "criminals of passion." And there are those who yield easily to temptation, the "criminals of opportunity." The latter two are obviously corrigible; though Lombroso shrewdly suspected that, prisons being what he had seen them, the chances of correction, and possibly even the chance of reparation, would be greater out of prison than in. The study of all these various types had naturally a growing fascination for so devoted a biologist; a fascination which, however, led him to overlook the external influences exercised by social environment. Taunted by the sociologists with this omission, Lombroso made in his later days the lame apology that he had said nothing about Environment "because its operation is so unmistakable that I saw no need to mention it; and therefore did not uselessly waste words upon what was already obvious." But the omission, whatever its cause, had soon been repaired by his colleagues. Lombroso had laid the biological basis of the New Criminology; Garofalo worked out its legal bearings; and Ferri, stirred by the study of Karl Marx, enriched it with an ample sociological commentary.

The great principle of this new school was to study, not the offence, but the offender. Given a bad man who had shown a bad intention, the question at once arose—how to deal with it. And they ridiculed the lawyer's habit of wasting time on inquiring whether this intention had ended in a mere attempt or in a consummated crime, and what share of the subsequent ill results was due to that crime or to external interference, and what degree of complicity and of responsibility attached to each participator in the crime. Moreover, in their comparative disregard of all offenders who did not manifest the characteristic "psycho-physical anomalies," the new school advocated the treatment of petty offences rather by exacting compensation than by inflicting punishment at all. But this lenity to one class was counterbalanced by trenchant dealing with another. The rational benevolence of the eighteenth-century writers had degenerated in the nineteenth into a weak humanitarianism which, if it could but escape from inflicting present pain, was content to leave the community to run the risk of great future suffering. Against all such short-sighted weakness the new school had the courage to raise an outspoken protest. They realise the evil of rendering prisons so comfortable as to become incentives to crime instead of deterrents. Instead of elevating the incorrigible criminal into a victim or perhaps a hero, Garofalo frankly acknowledges their "repugnance for a being so evil and so unlike a man." Beccaria and Filangieri had contended not only against torture but also against capital punishment. Italy's modern jurists bid society regard its self-preservation

as the first consideration, and—usually by imprisonment for life but by death if need be—"eliminate the unassimilable."

A school with theories so novel soon found assailants. Its very biology was attacked; and by competent critics, like Virchow and Sernoff. And no two men are alike; so Lombroso's "normal man" does not exist, but is one of those "metaphysical" abstractions which he loved to denounce. Again, it was shown that the characteristics which he pronounced to be criminal can be found in many honest men; and that in many of the delinquents in whom they are traceable they are not innate but merely the fruit of penury and hardship. And the growing tendency of science to doubt the inheritance of acquired characteristics is now intensifying this line of objection. Other critics, again, pointed out that, even if Lombroso had depicted his biological type correctly, he had greatly exaggerated the frequency of its occurrence; and that any experienced governor of a gaol could tell him that the general run of prisoners are very much like other folks. Moreover, it is found that criminals are rarely "specialists"; Yvernes ascertained that in France 60 per cent. of the second convictions are for an offence of a different type from the previous one. So even the recidivists show little evidence of being under the influence of a fixed tendency.

And, whether or not the new criminologists had fallen into error or exaggeration in the treatment of the facts which they had investigated, it was obvious that a further group of facts—perhaps still more directly important—had been cavalierly dismissed by them as unworthy of investigation. For they pressed on us a psychology without a psyche. "The wider," wrote Ferri in 1905, "grows the domain of our criminological science, the narrower become those of mere commonsense and of religion." The boast is but an ambiguous one! In their zeal for the study of the criminal's physical organisation, the Italian jurists cry: "No metaphysics; no free will; no dream of Responsibility." Our universal consciousness of personal choice in our actions, Ferri dismisses as "a mere subjective illusion." Similarly Garofalo insists that "whenever judges do take the trouble to inquire whether or not a criminal is really responsible, it always turns out that he is *not*." Yet an observer who had spent long years in charitable labours in the prisons of Spain has told us that "I never met (and I never knew any one else speak of having actually met) any prisoner who considered that he had no freedom of will in committing his offences, or that he had been brought to them by a necessity that left him no personal blame." Yet such actual experience we are called upon to ignore, at the bidding of a theory. "The two postulates of the world's traditional systems of criminal justice," says Garofalo, "are that 'Guilt is measured by responsibility' and that 'Punishment should be measured by guilt.' But science has now proved both these postulates to be false." A further unfortunate result of Lombroso's preference for the physical over the mental side of things was that, in formulating his theories, he took little pains to define with

any precision the terms in which he formulated them—an omission which did much to lessen the value of the theories and to facilitate superficial attacks on them. Around even such salient conceptions as those of insanity, epilepsy, genius, nay, of crime itself, he was content to leave a mist of vagueness. This lack of definiteness was the price he had to pay for his lifelong contempt for the metaphysicians, who could have taught him their art of logic.

But when all these deductions from Lombroso's fame have been made, how much remains! It is idle to speak of his doctrines as "a nineteenth-century astrology or alchymy." There was real genius in the intuition which led him, amidst his studies of insanity, to see the social importance of carrying forward their results and methods into the domain of crime. And the tenacious industry with which he pursued the path thus opened; the courageous energy with which he announced and disseminated the discoveries to which it led him; and the no less courageous modesty with which he frankly modified his generalisations when flaws in them became obvious:—all these are merits which every scholar must admire.

His courage was manifested in his frank criticisms of what he saw around him in the field of law. A jurist audacious enough to smile even at the House of Commons, and to pronounce the admiration for Parliamentary institutions to be "the grossest of modern superstitions," was pretty certain to take an independent view of the merits of mere tribunals and their procedure. Even so admired and so widely copied an institution as the Jury he attacked. He saw that this "bizarre creation" (as Garofalo terms it) often gives acquittals which are obviously at variance with the probabilities of the case; and he advised its abolition, except in political prosecutions where the interest of the government is so obviously engaged as to render necessary some such check upon the subservient zeal of the judges. Tarde, usually a hostile critic of the Lombrosians, praises them for "heaping their sarcasms on trial by jury"; as they indeed do. Ferri demands its abolition "in the name of the fundamental reason and final purpose of every criminal trial." Yet, as Garofalo laments, "in our Italian Parliament, not a single member has raised his voice for its abolition." Let him rejoice to know that in England four-fifths of our indictable crimes are now disposed of by magistrates without any jury. The facility of appeal, which has gone so fatally far in the United States, Lombroso condemned still more bitterly. "Here in Italy," he writes, "justice is rendered ridiculous by appeals; they deprive punishment of all promptitude and all certainty"; a guilty man sometimes seeing his conviction reversed for some technical or even verbal error. The censure recalls the frequent regrets of our own new Court of Criminal Appeal, that it is not allowed to send such a man back for a fresh trial. The power of pardon, "one of the many inconsistencies of modern criminal law," he similarly condemned. It was a condemnation in which he found himself in the unaccustomed company of Beccaria and

Filangieri; and which may not seem wholly inexcusable to those who have seen Home Secretaries become timid or docile in the presence of newspapers that drive a profitable trade in patronising the perpetrators of sensational crimes. Carrying into the unfamiliar field of law the calm habits of the laboratory, Lombroso even condemned that "litigious" method of criminal procedure, whose equal struggle between Crown and defendant modern English jurists pride themselves on having substituted for the old "inquisitorial" investigations. Even in the oral public examination of the witnesses he saw little value; it seemed to him "a useless, and sometimes erroneous, repetition of what has already been set down in their depositions. The presence of the public and the onslaughts of the counsel for the defence may confuse them now; whereas in a little room, before only two or three persons, it is much easier both to recollect facts and to recount them." Hence his followers condemn the English admission of the public to that preliminary examination; (as also our readiness to concede at its termination a release on bail). But whatever the circumstances under which witnesses might recount their narrative, their testimony carried much less weight in Lombroso's eyes than it does in those of lawyers. He was eager to supplement it—indeed he speaks as if almost content to replace it—by "the gigantic evidence" which biology could disclose about the prisoner's personal characteristics and his present emotions. On the importance of testing these emotions he insisted much. All novel-readers remember how vividly Sir Walter Scott had realised that the pulse may prove a tell-tale as to what is passing in the mind. Cœur de Lion, in *The Talisman*, clasps the wrist of the Arab physician in order to detect whether his blood "throbs like theirs who poison princes"; and in *Peveril* King Charles tests Fenella's apparent deafness by making Lady Derby feel if her heart beats quicker when he announces alarming news. But Scott little foresaw that this clue was to be developed into a forensic instrument of mechanical precision. Lombroso dwells with enthusiasm on the revelations of guilt or innocence that can be elicited by using the hydrosphygmograph or the volumetric glove. By these a prisoner's wrist and hand are immersed in a confined volume of water or of air, whose oscillations, as his pulse varies, are registered by a needle upon a moving chart. The investigating expert talks to him of incriminating circumstances, or shows him the instruments of the crime or the relics of the victim; and the needle records his excitement or his indifference.

To make an accused person thus the involuntary subject of a biological experiment may seem to us a process that savours rather of the laboratory than of the law-court. But Lombroso had a savant's eagerness in the pursuit of truth; and was too little of a jurist to realise that law-courts must content themselves with just so much of the truth as is sufficiently obvious to the popular eye to make its assertion by physical force not only right but also politic. Hence he censured the sweeping presumptions of

innocence by which the law safeguards the accused; why should the slighter degree of malice be treated as more probable than the heinous? In a born criminal or a recidivist the very reverse would be true. To his scientific eye it seemed that—as Garofalo puts it—"Our present laws and law-courts protect the criminal against society, rather than society against the criminal." Indeed this last-named disciple of Lombroso expressly condemns the great Italian jurists of the eighteenth century for having reformed away the mediæval course of criminal procedure and substituted "one which treats every accused person as if he were a victim of persecution."

But if this hostility to English methods startles us, let us set off against it Garofalo's own calculation that in England murders are less frequent than in eight other great countries of Europe, and twelve times less frequent than in Italy. And let us bear in mind the striking words written by Ferri only four years ago: "In England the criminal law is uncodified and very defective. But the judges are excellent; and consequently the practical working of criminal justice is satisfactory. In Italy, on the other hand, we possess a Code on which twenty-five years' labour has been lavished. But our judges are incompetent in point of learning and moreover are in subjection to the Executive—so the administration of our criminal justice is in disrepute, it is impotent against evil-doers and vexatious to honest men."

Yet though our English procedure has indeed succeeded, and to a degree probably without parallel, in restraining crime, and at the same time in retaining the confidence of the masses of the people, it by no means follows that it has nothing to learn from Lombroso's bold criticisms. Assuredly there are certain other unwelcome truths which he showed a like courage in propounding, which we have great need at the present time to lay to heart. In the interests of the next generation he insisted that the law ought not only to permit, but to command, divorce in any case of grave crime or of chronic alcoholism, of insanity or of inveterate epilepsy. And the force of statistics brought him to the still more unpopular conclusion that "in proportion as women take a more and more active share in the struggle for life, the more rapidly does crime increase amongst them." And amidst the general modern readiness to treat organised disturbances of the public tranquillity as acts venial or even laudable, and to regard "political" motive as a sufficient excuse for any violence, he insisted on the fact that "though crimes due to political motive may be less wicked, they are more dangerous to society than ordinary crimes are." It is well, just now, to turn over the pages of *Gli Anarchici*, and ponder there Lombroso's warning that "history abounds in instances of the union of political zeal with a criminal disposition. In the early stages of rebellions, and in all riots, criminals are generally prominent. For the vehemence of their abnormal characters hurries them in advance of the wavering

and the timid; and the example set by them soon creates excesses of violence by a very epidemic of imitation." (P. 48, cf. p. 36.)

Whether or not, however, we consent to be taught these further lessons by Lombroso, we shall still be in his debt for those we have already learned from him. But for his labours we should not now be beginning to grapple with the problems of vagrancy; nor have become convinced of the perils of solitary confinement; nor have learned to reclaim first offenders by release into a period of well-supervised probation, and to protect ourselves against hardened ones by secluding them in preventive detention. Nor should we have realised to the full the importance of the individualisation of offenders, which enables us not merely to separate from the common herd of criminals the classes suited to these two extremes of treatment, but also to render ordinary penal discipline dissimilar for dissimilar men, dealing with each separate offender as his disposition and circumstances demand. "Tell me about yourself," the late Mr. McConnell used to say at the London Sessions before passing a sentence, "especially tell me something good about yourself." He had learned the Lombrosian lesson—the necessity of individualising.

Not long before his death, Lombroso wrote of himself as having passed "a studious life, perhaps not with distinction, but at any rate with honesty and sincerity." Assuredly his career was not only sincere and honest, but also distinguished; and—what is better still—it was useful.

THE HISTORY AND PRESENT CONDITION OF THE GERMAN DIVORCE LAW.

[*Contributed by* E. J. Schuster, Esq., LL.D.]

(*A*) HISTORY.

Five different factors have successively influenced the German divorce law: (*a*) Germanic custom; (*b*) the canon law; (*c*) the Reformation; (*d*) the influence of rationalism and natural law doctrines; (*e*) the influence of unification and compromise. I propose to deal separately with each of these factors.

(*a*) **Divorce under Germanic Law.**[1]—Under the original Germanic law it was permissible for any husband and wife to dissolve their marriage by mutual consent without any further formality, and each of the spouses after such dissolution was free to re-marry. In addition to this, the husband was entitled to dismiss and even to sell his wife on the ground of her adultery, and the wife was also under some of the laws entitled to leave her husband if he was guilty of certain specified acts of cruelty. The introduction of Christianity into Germany did not immediately put an end to this state of things. Various efforts to prohibit by legislation the re-marriage of any person whose previous marriage had been dissolved by divorce proved unsuccessful, and it was only in the course of the twelfth century, when the jurisdiction in matrimonial matters was taken over by the ecclesiastical courts, that the Church succeeded in making its views effective.

(*b*) **The Doctrine of the Canon Law.**—The rules of the canon law as to divorce are too well known to require restatement; their most characteristic feature is that they enable the Courts to sever the marital relations between the spouses while depriving even the innocent spouse of the right to re-marry, and thus to create a status which was unknown to the previous law.

The "separatio quoad mensam et torum" was an innovation apt to create great hardship and to promote immorality, but the doctrine which led to its adoption did not have all the mischievous consequences which it might have had, owing to the fact that it was in many cases just as easy

[1] See the authorities quoted by Heusler, *D. Pr.* vol. ii. pp. 291, 292; Brunner, *D. Rechtsgeschichte*, vol. i. p. 75; Friedberg, *Kirchenrecht*, 5th ed. pp. 472, 473.

to obtain a decree of nullity as to obtain a separation. The grounds on which a marriage can be invalidated under the canon law are so numerous that the presence of one of them may be discovered in almost every case. The prohibitions of marriages between blood relations and relations by marriage, even where the degree of relationship was extremely remote, were alone sufficient to furnish excuses in many cases, and other impediments (spiritual relationship, pre-contract, etc.) might be available in cases in which there was no previous kinship or affinity of any kind between the spouses.

(*c*) **Effect of the Reformation.**—The heads of the reformed Churches in Germany repudiated the jurisdiction of the ecclesiastical Courts in divorce matters and the doctrine as to the indissolubility of marriage. The Appendix to the Articles of Schmalkalden of 1537 contains a passage of which the following sentences are a translation [1]:

> Therefore no one is bound to obey the Bishops when they exercise such jurisdiction, and the less so as they have established inequitable rules in matrimonial matters and apply the same in their courts; therefore the secular power for this reason also is bound to make other provisions as regards these Courts. For as the prohibition of marriage between cousins is wrong, so it is also wrong that where two have been separated the innocent party should not be free to re-marry. . . . There are also in their rules other things whereby the consciences have been disturbed and molested, which it is unnecessary to enumerate in this place, it being sufficient to show that it is known that in matrimonial matters many wicked and inequitable things have been ordained by the Pope by reason of which the secular power has reason enough to establish those courts for itself in a different manner.

The first result of the Reformation was the creation of the two co-existing main systems of divorce law, one affecting the Roman Catholics [2] and administered by ecclesiastical courts, and the other the Protestant population and administered by secular courts. The Protestant systems varied in the different localities: adultery (whether committed by the husband or by the wife) being universally recognised as a ground of divorce, whilst considerable difference existed as to the effect of other matrimonial offences (desertion, cruelty, etc.). Perpetual separation *quoad mensam et torum* was not decreed by the Courts, but it was in the discretion of the Court in any case in which a proper ground of divorce had been proved to pronounce a decree of separation for a definite period, after the lapse of which a divorce was ordered if the parties had not become reconciled in the meantime.

(*d*) **Effect of Rationalistic Influences** (1) *As regards Divorce.*—The rational-

[1] The Appendix is reproduced by Emminghaus, *Corpus Juris Germanici*, 2nd ed. pp. 213, 214.

[2] The doctrines of the Church as regards divorce, in so far as they affect Roman Catholics, were confirmed by the Council of Trent (see *C. Trid. S.* xxiv. *De sacr. matr.* 7, 8).

istic influences and the doctrines as to the law of nature which pervaded the intellectual atmosphere of the eighteenth century did not fail to have an effect on the law of divorce. The first pioneer in that respect was Frederick the Great. The clauses of the Corpus juris Fridericiani relating to this matter—which allowed divorce by mutual consent—were enacted as law in some of the Prussian provinces, and in 1751 an edict was issued for the whole monarchy in which the Courts were directed not to raise difficulties in the case of such spouses seeking divorce as were mutually affected by *inimicitiæ capitales et notoriæ*. The increase in the number of divorces brought about by this edict induced the authors of the Prussian Code (Allgemeines Landrecht), which came into force in 1784, to introduce greater restrictions, but "invincible mutual aversion" was retained as a ground of divorce in any case in which there were no children of the marriage and in which both spouses desired to be released from the marriage tie; on the petition of one of the spouses a divorce, on the ground of mutual aversion, was not to be granted except in the event of it being clear from the evidence that the aversion was violent and so deeply rooted that all hope for a reconciliation had disappeared. In such a case, however, the petitioner was made subject to the pecuniary disadvantages which, as a general rule, were inflicted on the guilty party (Prussian Code, II. i. paras. 716-18*b*). In addition to this the following grounds of divorce were recognised: adultery, wilful desertion, refusal to submit to marital intercourse, impotence, permanent mental disease, acts of cruelty and aggravated insults, serious criminal punishment, dissipated or intemperate habits, if persisted in, husband's failure to maintain wife if brought about by crime, or by vicious or extravagant habits, and change of religion (*ibid.* II. i. 668-715). The facts constituting each of these matrimonial offences are set forth with great minuteness and afford a good illustration of the tendency shown throughout the "Prussian Landrecht" to deal with every possible case which might arise. A somewhat amusing distinction is made as regards insults: "Married persons belonging to the lower classes are not to be divorced on the ground of the occurrence of oral insults or threats, or of minor acts of cruelty. In the case of persons belonging to the middle or upper class, a divorce is only to be decreed if the respondent has wantonly and without urgent motive been guilty of such acts of cruelty or insults on repeated occasions" (II. i. 701, 702). One wonders for what kind of insult or cruelty inflicted on his wife a husband belonging to the middle or upper class could find an urgent motive!

The Code Napoléon became the law of France in 1804, and was also enacted in various parts of Germany between the years 1804 and 1811; the said Code, as is well known, was under the influence of the ideas of the French Revolution, which in their turn, to a very large extent, owed their origin to the same "natural law" theories which, as mentioned above, had acted on the mind of Frederick the Great. Articles 229-33, which define

the grounds of divorce, have a similar effect as the above-quoted sections of the Prussian Code,[1] and, as in the Prussian Code, the grounds of divorce include mutual consent subject to the presence of certain other specified circumstances. Article 233 provides that "the mutual consent of the spouses, if persevered in and expressed in the manner required by law and under the conditions and after the application of the tests imposed by such law, shall be deemed sufficient evidence of the fact that the common conjugal life is unbearable to them, and that there exists in respect to them a peremptory ground of divorce."

In France the articles of the Code relating to divorce were repealed in 1816,[2] but they remained in force in those parts of Germany which had introduced the French law as mentioned above. In the Grand Duchy of Baden a modified translation of the Code Napoléon which came into force in 1810, embodied the whole original French divorce law with the addition of an article (*232a*) making prolonged mental disease a ground of divorce.

The influence of the ideas embodied in the Prussian Code and the Code Napoléon did not penetrate beyond the parts of Germany in which these enactments or their statutory modifications were in force. In all other parts of Germany the old law prevailed down to 1875[3]; under that law divorce *quoad vinculum* was not granted in the case of spouses belonging to the Roman Catholic Church; in the case of spouses not belonging to the Roman Catholic Church the law of their particular Church was observed.

(2) *Effect of Rationalistic Influences as regards Judicial Separation.*— The Prussian Code provided that separation *quoad mensam et torum* was not to be pronounced in any case in which one of the spouses was a Protestant, and that as regards Catholics a decree of permanent separation was to have the full effects of a divorce decree (Prussian Code, II. i. 733, 734); but as down to 1874 Roman Catholics domiciled in Prussia were unable to contract a valid marriage otherwise than by means of a religious ceremony satisfying the requirements of the canon law, these provisions were not of much practical value. The Code Napoléon by Art. 310 allowed a person entitled to petition for a divorce to substitute a demand for judicial separation (*séparation de corps*), but after the lapse of three

[1] The following are the main differences: Permanent mental disease is not a ground of divorce in French law. The provision of the Code (art. 230), according to which a husband's adultery was not a ground of divorce except in the case of his keeping a concubine in his own house, disturbs the equality between husband and wife which the Prussian law had established; as regards France this was altered by the law of 1884.

[2] They were re-enacted in 1884 with some modifications, the most important being the omission of the above-quoted article 233, which allows divorce by mutual consent.

[3] The Civil Code of the kingdom of Saxony (which came into force in 1865) in respect of divorce merely re-enacted the former law and maintained the distinction between Roman Catholics and persons belonging to other faiths (see ss. 1712-70).

years the respondent—not being a wife on the ground of whose adultery the separation was ordered—was entitled to have the separation converted into a divorce,[1] unless the petitioner was willing to resume cohabitation. As the rule of the Code establishing compulsory civil marriage was introduced in all German territories in which French law came into force (with the exception of the Grand Duchy of Baden), a Roman Catholic domiciled in one of these territories who had been divorced could not, as a general rule, be perpetually restrained from re-marrying.

In the other parts of Germany the rules of the canon law as to temporary or perpetual separation *quoad mensam et torum* had full force as regards Roman Catholics.

(*e*) **Effect of Unification and Compromise.**—The first step of unification in the matter of marriage law was taken by the Imperial Registration Statute of 1875, by which civil marriage was made universal and compulsory throughout Germany, and by which at the same time it was enacted (s. 77) that "in every case in which under the former law a decree of perpetual separation *quoad mensam et torum* would have had to be pronounced, the Court was to order the dissolution of the marriage." Thus between 1875 and 1900 divorce *quoad vinculum* was universally permitted throughout Germany without any reference to the religious persuasion of the parties; and perpetual separation in the legal sense of the word ceased to exist. The grounds of divorce, however, during that period remained as diversified as they were before. At the time when the statute just referred to was passed, the preliminary work connected with the preparation of the German Civil Code was already in progress. The unification of the rules relating to divorce was one of the most serious problems which the authors of the Code had to solve, and this accounts for the vicissitudes [2] which these rules had to undergo before the final haven was reached.[3]

[1] In the modern French law this article was considerably modified.

[2] The varieties of opinions on the subject appear very clearly from the compilation of criticisms printed by the Imperial Judicial Department for private circulation, vol. iv. pp. 266-326.

[3] The following instances are of interest:

The original draft did not recognise the lunacy of one of the spouses as a ground of divorce, but the second Commission introduced a new clause enabling the husband or wife of a person of unsound mind whose mental disease had extended over a period of more than three years and was incurable to obtain a divorce. The clause in question was rejected by the Select Committee of the Reichstag who had to report on the Code, but was finally reinstated on the third reading of the final draft Code by a majority of twenty-six votes (see *Mugdau Materialen*, vol. iv. pp. 905-1165, 1233-43, 1345, 1415).

Under the original Bill certain grounds did not give an immediate right to divorce, but merely a claim to a temporary separation, which subject to compliance with certain specified conditions might be converted into a divorce. The second Commission made the grounds in question grounds of divorce, and removed the possibility of obtaining a temporary separation. The Select Committee of the Reichstag did not reintroduce temporary

The rules as to divorce and separation which were finally adopted by the German Legislature are the result of many compromises successively arrived at after long debates and heated controversies. They allow Roman Catholics to conform to the rules of their Church by claiming separation in the place of divorce, and in respect of the grounds entitling to a divorce or a separation they keep a middle line between the extreme freedom of the Prussian Code and the severity of the canon law and the Protestant Church law. Except in the case of the permanent insanity of one of the spouses, divorce is not granted unless a matrimonial offence has been committed by the respondent; mere incompatibility or mutual dislike is not a ground of divorce.

(*B*) PRESENT CONDITION OF GERMAN DIVORCE LAW.

(1) **Relation of Claim to Divorce to Claim to Separation.**—The grounds on which a separation may be obtained are the same as the grounds on which a divorce may be obtained; it is therefore in the petitioner's choice whether he or she will claim a divorce or a separation. The Court, however, notwithstanding the fact that a separation has been claimed, must, in the event of the claim being substantiated, grant a divorce decree instead of a separation order, if an application to that effect be made by the respondent. While the spouses remain separated in fact, pursuant to a separation order, either of them is at any time entitled to claim the conversion of the separation order into a divorce decree (German Civil Code, ss. 1575, 1576). The practical effect of these provisions is, that, except in the case of the petitioner being a Roman Catholic, a separation order is hardly ever applied for; if the respondent is not a strict Roman Catholic he or she will, as a general rule, claim the substitution of a divorce decree for the separation order, and even if both parties at the time of the hearing of the petition are satisfied with the separation order, either of them may at any subsequent time be released from the marriage tie if he or she become desirous of such release. Under the present German law civil marriage is compulsory, and a person lawfully divorced may accordingly re-marry (subject in the case of a divorced woman to the rule as to delay mentioned below), whatever his or her religious

separation, but introduced a provision (which has remained in the Code) entitling every petitioner to claim permanent separation (*Aufhebung der ehelichen Gemeinschaft*) in place of a divorce—subject, however, to the mitigation referred to below (see *Mugdau*, pp. 317, 321, 895, 1165, 1233, 1241-1246, 1335, 1418). Thus the separation *quoad mensam et torum* abolished in 1875 was, under another name, reintroduced in 1900, but, as shown by the statement in the text, sub. (*B*) (1), some of its most objectionable features have disappeared in the process of transformation. The reintroduction of this form of separation was a necessary concession to Roman Catholic feeling, as there was a serious danger of the centre party bringing about the rejection of the Code, and thus destroying the work of twenty-two years and the hope of a unification of German law.

faith may be; but such a person, if a Roman Catholic, would not be able to follow the usual course, according to which the civil marriage is followed by a religious ceremony, and would therefore, if re-marrying, be guilty of a breach of the rules imposed upon him by his Church.[1]

Temporary separation, though not expressly recognised by the German Civil Code, exists in actual practice under the provisions of the Code of Civil Procedure (ss. 620-27), which enable the Court in certain events to stay the proceedings for a period not exceeding two years, and at the same time to make an interlocutory order providing for the separation of the parties during the trial.

A temporary separation of this nature is ordered: (*a*) in any case on the petitioner's application; (*b*) in the event of a divorce being applied for under the general clause (see below (*B*) (2), sub (*d*)), and the Court being of opinion that a reconciliation between the parties is not impossible.

(2) **Grounds of Divorce.**—A petitioner is entitled to obtain a divorce: (*a*) if the respondent has been guilty of adultery, bigamy, or sodomy, unless the offence was committed with the petitioner's sanction and aid; (*b*) if the respondent has threatened the petitioner's life; (*c*) if the respondent has been guilty of wilful desertion (evidenced by disobedience to a decree for conjugal rights continuing against the petitioner's will for a period exceeding one year [2]; (*d*) if the respondent by means of a serious breach of his or her marital duties or by dishonourable or immoral conduct has caused the relations between the spouses to be so injuriously affected that the respondent could not reasonably be expected to continue the marriage. In any of the above-mentioned cases the petitioner's right is barred by condonation and may also be barred by lapse of time. A petitioner is also entitled to obtain a divorce: (*e*) if the respondent has suffered from mental disease during a period of at least three years, and if the illness has become so serious that any community of intellectual interests has become impossible and there is no prospect of recovery (German Civil Code, ss. 1564-73).

The grounds on which a divorce can in practice be obtained under the general clause referred to above, sub (*d*), are very varied. Acts of cruelty are expressly referred to as constituting a serious breach of marital duty, and the following other tendencies, acts, or omissions, in the presence of which the Courts have deemed such a breach of duty to have taken place, may be mentioned by way of illustration: a highly developed quarrelling propensity, neglect to give proper maintenance, grossly improper conduct, grossly slanderous or insulting allegations about the other spouse,

[1] The German Civil Code (s. 1588) contains an express enactment to the effect that nothing therein contained is to affect the ecclesiastical obligations relating to marriage.

[2] In certain cases in which the petitioner cannot be personally served with a petition for restitution of conjugal rights, the effect of a continued absence is sufficient to establish desertion—see German Civil Code, s. 1567 (2 Nr. 2).

etc. The following classes of acts have been held to be acts constituting dishonourable or immoral conduct: the commission of a criminal offence of a dishonourable character, habitual drunkenness, the carrying on of a disgraceful trade, grossly indecent conduct, etc. A divorce has also been granted on the ground that a husband who, before contracting a marriage, had assured his future wife that the civil marriage would be followed by a religious ceremony, subsequently refused to perform his promise, and similarly the failure to carry out a promise as to the religious education of the children would be considered dishonourable conduct entitling the promisee to obtain a divorce.

The matrimonial offences described above, sub (*a*) (*b*) and (*c*), are known as absolute grounds of divorce, because on proof of the facts the Court has no further discretion; the offences referred to sub (*d*) are, on the other hand, described as relative grounds of divorce, as the proof of the act constituting the offence is insufficient, unless the Court in its discretion holds the relation between the spouses to have been disturbed to the extent which the law, as mentioned above, requires, if a divorce is to be granted. If, in the opinion of the Court, there is a possibility of reconciliation between the parties, the Court may—as mentioned above—order the proceedings to be stayed for a period not exceeding two years, and at the same time direct the parties to separate during the pending of the suit; an order of this kind—as mentioned above—is in effect an order for temporary separation.

The commission of any matrimonial offence by the petitioner does not bar his right, but he or she is thereby deprived of the privileges which he or she would have had, if the other party had been alone convinced of a matrimonial offence. These privileges include the custody of the children (see German Civil Code, s. 1635) and certain pecuniary advantages. The Court in its judgment must declare whether one party alone is the guilty party, or whether each party has been guilty of an offence justifying the other party to obtain a divorce (German Civil Code, s. 1574).

In a case in which both parties have been convicted of a matrimonial offence, the custody of all daughters and of such sons as have not completed their sixth year is given to the mother; and the father obtains the custody of sons who have completed their sixth era. The parent who is deprived of the custody of a child retains a right of access, the manner of which is regulated by the Court (s. 1636).

A divorced wife is not allowed to marry for a period of ten months from the date of the final divorce decree; but this prohibition, which has for its object the prevention of doubts as to paternity, is only in the nature of an *impedimentum impediens*, and can be removed by Government dispensation. It ceases if a child is born before the expiration of the period (German Civil Code, s. 1313).

(3) **Jurisdiction and Procedure.**—Under German law the provincial Court

(Landgericht) in the district of which a husband is domiciled [1] has exclusive jurisdiction in all matters relating to the matrimonial affairs of such husband. There are 176 provincial Courts in Germany, and as the number of inhabitants in the German Empire, according to the census of 1905, amounted to about 60,000,000, this means that on an average the district of a Divorce Court holds about 350,000 inhabitants.

The characteristic feature of German divorce procedure is, that before the actual commencement of the proper divorce proceedings, a hearing must take place before the local Court [2] (Amtsgericht) in the district of which the husband is domiciled in the course of this hearing, the Court must attempt to reconcile the parties, who must be present in person, and, if the Court so orders, without the assistance of counsel (Code of Civil Procedure, ss. 609, 610). According to the official statistics, about one-third of the causes are eliminated by this procedure.

The other proceedings are similar to those in other classes of actions, except that the rules as to admissions do not apply, and that every fact constituting a ground of divorce has to be strictly proved, though not disputed by the other party (Code of Criminal Procedure, s. 617). There are, however, no rules prohibiting arrangements between the parties as to the mode of conducting the proceedings, and such arrangements are in fact frequently made. The Public Prosecutor may join the proceedings at any stage (*ibid.* s. 607).

(4) **Results of the Present Law.**—The fact that in many parts of Germany the grounds of divorce have been reduced by the German Civil Code has at first produced a slight decrease in the number of divorce petitions, but since then there has been a marked increase. The ratio of increase does not seem to diminish, as the following table will show :

Year.	Number of divorce petitions.	Number of final divorce decrees.
1895	11,189	
1896	12,089	
1897	12,169	
1898	12,758	
1899	13,226	
1900	11,227	
1901	12,414	8,037
1902	13,962	9,221
1903	15,259	10,094
1904	16,154	11,060
1905	16,436	11,531
1906	17,600	12,397
1907	18,290	13,045

[1] See Code of Civil Procedure, ss. 13-19, 606. The rule stated in the text is subject to exceptions and qualifications, the enumeration of which would not serve any useful purpose.

[2] On the average there are eleven local Courts in the district of each provincial Court.

To those who think it the supreme object of a divorce law to reduce the number of divorces, these results will appear as evidence of the failure of the German system; but this method of criticism, in the present writer's view, is highly superficial. The real effect of any system of divorce law cannot be shown by statistics. No statistics give the number of cases in which spouses, without being divorced, are separated in fact, or of cases where, though living in outward union, they are not in any sense sharing a common life. The unhappiness created by such a state of things, and the immorality which in many cases results from it, may be apt to dispose us in favour of a system under which a marriage can be dissolved on the ground of any serious breach of marital duty, and which places a Divorce Court within easy reach of every petitioner, poor or rich, who has suffered by reason of such breach of duty.

CODIFICATION IN THE PHILIPPINES.

UNITING THE CIVIL AND COMMERCIAL CODES.

[*Contributed by* CHARLES SUMNER LOBINGIER, *Judge of the Court of First Instance.*]

AT the last session of the Philippine Legislature an Act was passed creating a Code Commission

> for the purpose of revising the Civil, Commercial, Penal, and Procedure Codes, which have been in force to date, and the Mortgage and Land Registration Acts, and to prepare new codes upon said matters in accordance with modern principles of the science of law and with the customs of the country.[1]

Part of the members have since been appointed, and the writer has been designated to outline the work of the Commission and prepare a general scheme under which its labours might proceed. It has already become apparent that one of the most important tasks awaiting the Commission is the blending of the two codes first mentioned in the Act creating it, viz. the Civil and the Commercial. The plan of having these two separate codes, covering for the most part the same field (the Civil Code relating to private substantive law in general and the Commercial Code to mercantile transactions), appears to have originated in France in connection with the Napoleonic scheme of codification which was given actual form in the early years of the nineteenth century. At that time, and especially in that country, merchants constituted still a class by themselves, and their transactions were on the whole so different from those of other classes that they afforded subjects for distinct laws and even separate judicial tribunals. Indeed, something analogous to this existed in England, for the "law merchant" was originally a unique, not to say exotic, system whose rules were, and for that matter still are, inapplicable to ordinary transactions.

From France the idea of a separate commercial code seems to have been adopted, along with French code system in general, by most continental countries. In Spain the idea took form in the Code of Commerce of 1829, considered by some at least to have been much superior to its successor, the Code of 1886, which in 1888 was extended to the Philippines, where, except as modified by American legislation, it is still in force.

[1] No. 1941.

Defects of the Double Code System.—But the conditions which once may have justified a separate Code of Commerce no longer exist, especially in the Philippines. Commercial transactions are not now confined exclusively or even largely to merchants, nor do the latter constitute an unchanging caste, entrance to or egress from which is difficult. Moreover, commerce, far from being despised, is now recognised as one of the worthiest of callings, which it is the policy of modern legislation in all possible ways to aid and encourage.

The Commercial Code now in force in the Philippines is generally regarded by both lawyers and laymen as offering impediments to commerce. Many of its requirements, like those of elaborate systems of books and of commercial registers, are ill adapted to the country, and in fact are often disregarded in the provinces, with the result that much hardship is sometimes caused to innocent parties. The artificial distinction between "commercial" contracts and "civil" contracts, or between "commercial" partnerships and "civil" partnerships—in other words between those governed by the Code of Commerce or by the Civil Code—is confusing and leads to much uncertainty and consequent injustice. Even the judges of the Supreme Court are not always agreed as to the proper classification. In one case [1] three separate opinions were written on the question whether plaintiff was a civil or a commercial partnership. Johnson J. for the majority apparently held to the former, but said:

> The Commercial Code for the Philippines does not attempt anywhere, as some other codes do, to define what are commercial transactions. In the absence of proof to the contrary, therefore, we must be governed as to the purposes of the association by the form adopted by its organisation and the purposes declared in its articles of association.

Arellano C.J. concurring, said:

> This case presents the much-debated question of the legal personality of a civil partnership in the mercantile form.

Torres J., on the other hand, held that the concern was a mercantile partnership and, though nominally organised under the Civil Code, was really governed by the Code of Commerce.

Where judges of the highest court differ so radically, what can be expected of laymen, who must, nevertheless, bear the consequences of a mistake?

Something like consternation and even indignation stirred the Philippine business community following the decisions [2] of the Supreme Court that the indorsee of a promissory note or a draft could not collect thereon if

[1] *Compañia Agricola* v. *Reyes*, 4 Phil. 2.

[2] *International Banking Corporation* v. *Montague*, 6 Phil. 667; *Warner, Barnes & Co.* v. *Diaz*, 10 Phil. 418.

his indorsement were undated. Yet this was merely applying the literal provisions of the Code of Commerce,[1] which had been in force in the Philippines for a score of years, though mostly undreamed of by foreign merchants.

The hampering effect of antiquated commercial laws is peculiarly unfortunate at this time when, as the result of the recent liberal Congressional legislation opening the markets of continental America to the Philippines, the latter seem to be on the verge of a new era of industrial expansion and commercial prosperity. It is of the utmost importance to see that none of this be lost or diminished through the retention of an outgrown or ill-fitting code.

Opportunity to Utilise the American Code Movement.—Fortunately just at the time of their greatest need in the matter of wise commercial legislation, the Philippines are supplied with what amounts at once to a source and a model in the current American movement for uniform legislation and its results. About twenty years ago the Committee of the American Bar Association on Uniform State Laws recommended to that body that efforts be made to secure the appointment by the authorities of each state of commissioners to meet in annual conference and endeavour to agree upon measures which could be recommended to their respective legislatures for enactment. The recommendation was adopted and gradually carried out, the first conference meeting at Saratoga Springs in 1892 and annually thereafter, and the number of commissioners increasing steadily until at the present time forty-six states and territories are represented.

The result has been to inaugurate, perhaps unconsciously, but none the less genuinely, a movement for the progressive, and at least partial, codification of American law. Unlike that initiated by the late David Dudley Field and his associates prior to the middle of the last century, the present movement was not started with an elaborate programme which included the codification of the whole body of the law or even a complete section of it like Procedure, which has been codified in two-thirds or more of the states as a result of the Field movement. The Commissioners on Uniform State Laws have been satisfied with advancing slowly and securing the adoption of Acts which, it was felt, would be the most essential features of a uniform code. But they have, nevertheless, already covered a variety of important subjects, advanced a considerable distance along the road toward codification, and built a number of permanent sections in the fabric of an ultimate American Code of private substantive law.

Work of the Commissioners on Uniform Legislation.—Among the most important achievements of the conference has been the preparation of these uniform statutes:

The Negotiable Instruments Act, now in force in thirty-eight states and territories;

[1] Articles 462, 463.

The Warehouse Receipts Act, in force in eighteen states and territories;
The Sales Act, in force in six states and territories;
A proposed Bill of Lading Act;
A proposed Certificates of Stock Act;
A proposed Partnership Act;
A proposed Marriage Code; and
A non-support law.

There have also been considered and discussed:

A proposed uniform Incorporation Law;
A proposed uniform Insurance Law;
A proposed uniform law for the registration (along the lines of the Torrens system) of title to land.

How this could be Utilised in the Philippines.—It will be seen that nearly all of this legislation is of a commercial character and is therefore of a kind most needed in order to meet the new conditions upon which the Philippines are about to enter. With the exception of the Torrens Act, which is already in force, and perhaps the Sales and Partnership laws, every one of these could be well adopted in the Philippines, and substituted for antiquated provisions of the existing codes. The Sales law as drawn by the Commissioners relates only to chattels, while Title V. of the last book of the Civil Code covers both real and personal property. It may be found also that Articles 1665–1708 of the same code are sufficient without the enactment of a new Partnership law. But with these exceptions the adoption of the work of the Commissioners on Uniform State Laws would not only supply certain immediate needs in the Philippines, but it would tend to place their legislation in line with the most advanced, give them the benefit of previous American judicial construction, and place at their disposal the results of the best professional and expert effort in the direction of legislative reform. Such an opportunity cannot wisely be ignored. The blending of Civil and Commercial Codes has been pronounced perfectly feasible by competent authorities. Judge Charles A. Willard, now of the United States District Court for Minnesota, but formerly of the Philippine Supreme Court, and everywhere considered one of its most learned members, informed the writer that he himself had worked on a plan for fusing these two codes, and had found that the process would be comparatively simple. The writer has worked out such a scheme, into which the new uniform American legislation largely enters, and has submitted it in the hope that it may aid not only in the preparation and adoption of a single code for private substantive law, but also in the incorporation therein of the best results of the contemporary American movement toward codification.

ESPIONAGE AND SCIENTIFIC INVENTION.

[*Contributed by* NORMAN BENTWICH, ESQ.]

THE Hague Convention as to the Laws of War on Land contains an article defining and limiting the class of persons who may be treated with the special severity, which from time immemorial has been accorded to spies captured by a belligerent.

"An individual," runs the article, "can only be considered a spy if, acting clandestinely or on false pretences, he obtains, or seeks to obtain, information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party. Thus soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly the following are not considered spies: soldiers or civilians carrying out their mission openly, charged with the delivery of dispatches intended either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver dispatches, and generally to maintain communications between the various parts of an army or a territory" (Hague Rules, 29, trans. by Prof. Holland).

The first part of the article sets out the general principle which determines the class; the second part enumerates certain species which are not included in the class; and while nobody can be a spy who does not answer to the conditions of the first part, it is clear that the exempted species are not to be taken as comprehensive, but only as illustrative. The necessary differentiation of a spy is that by clandestine acts or false pretences he obtains information with the purpose of communicating it to the enemy. If he has not acted clandestinely or by false pretences, he may be very obnoxious, but he is not a spy. The particular danger against which a belligerent may, according to the law of nations, guard himself by the imposition of severe penalties is the obtaining of valuable information for the enemy by deception. The man who obtains that information by open though by novel means must, if captured, be treated as an ordinary prisoner of war.

From time to time, however, attempts have been made by different belligerent powers to extend the term spy unwarrantably to persons who have applied a new scientific invention to watch or report their movements

to their opponents; but neutrals have in each case interfered to prevent them acting upon their declaration. The provision in The Hague Rules about individuals sent in balloons to deliver dispatches (which is taken out of the Brussels Convention of 1874) arose out of the action of the Germans in the Franco-Prussian War. The French sent out balloonists both to carry dispatches and to take observations of the enemy's lines; and Bismarck threatened to treat them as spies if they were captured, presumably on account of the intelligence they were able to obtain, while within the zone of the German operations but out of the reach of the German guns. The quality, however, of an action in war cannot be determined at will by its inconvenience to a belligerent; and in view of the protest which was made against his proclamation, Bismarck did not in fact impose the extreme penalty upon captured balloonists. He did indeed imprison some of them in fortresses, but even this was going beyond the proper rights of a belligerent. So far from seeking to obtain information clandestinely or by false pretences, a balloonist exhibits his purpose more openly than the ordinary scout. He is in the air visible, if not tangible. It is true that The Hague rule in terms only covers the case of balloonists sent to deliver dispatches and maintain communications,[1] and it does not specifically mention those who are sent to obtain information of the enemy's dispositions; but it is clear that these should fall under the same exemption from the class of spies provided they emerge from their own lines or are captured in uniform. At the same time, if soldiers descended from balloons, disguised, into the enemy's lines and there sought to gather information, or if neutral persons, ostensibly voyaging in the air for pleasure, were taken and were found to be carrying notes of the belligerent's dispositions to the other side, they might, it is apprehended, be treated as spies, because in the one case the disguise, in the other the false pretences of innocent voyage, would bring them within the definition.

During the Russo-Japanese War, for the first time in belligerent operations, wireless telegraphy was brought into use by the combatants, and another attempt was made to establish a new class of spies, this time to the detriment of neutral subjects. *The Times* newspapers of London and New York fitted up a Chinese steam-yacht, the *Haimun*, with wireless telegraph apparatus, and sent out correspondents on it to the Eastern seas, who, moving about within the zone of operations of the rival fleets, sent messages in cipher to Wei-hai-wei, whence they were telegraphed to the newspaper offices. The vessel was originally examined by the officers of both belligerents, who were at first, it seems, satisfied of its innocent purpose; but in April 1904, suspecting that the correspondents were giving valuable information to the Japanese, the Russian naval commander, Admiral Alexieff, issued a circular, of which the effect was communicated by the Russian diplomatic agents to the Foreign Offices of the neutral powers in the following terms:—

"In case neutral vessels having on board correspondents, who may communicate news to the enemy by means of improved apparatus not yet provided for by existing conventions, should be arrested off Kwangtung or within the zone of operations of the Russian fleet, such correspondents shall be regarded as spies, and the vessels provided with such apparatus shall be seized as lawful prizes."

The Russian Government, in communicating the circular to neutral powers, did not expressly state that it intended to uphold the strange doctrines of its admiral, and in practice it did not do so. The Foreign Offices of London and Washington issued a forcible remonstrance against the attempt to make war-correspondents "spies by decree," and expressly refused to waive any rights which they might have in case of the arrest of their citizens or the seizure of their vessels. The circular was really little more than a futile attempt to terrorise. A belligerent power undoubtedly has the right to make reasonable regulations for the control of war-correspondents. When it is anxious for secrecy, it may exclude them under penalties from the zone of its operations; moreover, it may confiscate for non-martial service any vessel belonging to a non-belligerent subject which is being primarily or exclusively employed as a means of providing information to the enemy—a right which is definitely embodied in Article 46 of the Declaration of London; it may hold as prisoners persons who are captured on such a vessel: but it cannot treat them as spies unless they are using or have used some deceit; and a novel device is neither necessarily nor presumably a deceit. The attempt of the Russian admiral to establish a rule, "Omne ignotum pro fraude," might have passed in the Middle Ages, but cannot be tolerated to-day.

Doubtless if a person, who had obtained leave to follow the military or naval force of a belligerent as a newspaper correspondent, were to abuse his opportunity and send messages by wireless telegraphy or otherwise to the other side, he would be guilty of the false pretence which constitutes the war crime of espionage. And there may be circumstances in which an ordinary belligerent or neutral subject, manipulating a wireless telegraph apparatus within the zone of the belligerent's operations, could properly be branded as a spy. If, for example, as suggested by Mr. Phillipson,[1] he were able, by experimenting with different wave-lengths, to intercept messages sent by one belligerent to part of its forces and transmit them to the other, he would by clandestine action be obtaining information. If, again, he were to interfere with a belligerent by intercepting his messages, and sending to his receiver in reply false information, though not within the definition of a spy as at present formulated, he might be treated upon the same footing as a spy, or brought within the definition if it is reconsidered at some future date. He would be guilty of false pretence, and the giving of false information under such circumstances is as dangerous to the belligerent as

[1] *Studies in International Law*, p. 110.

the communication of true information to his foe. If this interception of messages were carried out on the sea, it would not be necessary that the vessel fitted up with the wireless apparatus should be disguised, in order that the operator might be apprehended as a spy, seeing that the whole operation would be clandestine.

The Institut de Droit International at its annual meeting in 1906 drew up a number of rules in this sense, which define the proper status of persons sending wireless messages in war with and without false pretences respectively. By Article 7 of the Declaration it is provided that "Individuals who, in spite of the prohibition of the belligerents, engage in the transmission or reception of messages by wireless telegraphy between different sections of a belligerent army or territory are, if captured, not to be considered as spies, but to be treated as prisoners of war. It is otherwise, however, if the communication is conducted under false pretences. Despatchers of wireless messages are assimilated to spies when they employ false pretences or fraud. Ships and balloons belonging to neutrals, which by their communication with the enemy may be considered as engaged in his service, may be confiscated, together with the dispatches and apparatus found upon them. If it is not established that the communication was intended to provide the enemy with information about the conduct of hostilities, the subjects, ships, and balloons of the neutral state may be excluded from the zone of operations and their apparatus may be seized and sequestrated."

This rule establishes three classes of neutral persons who use the air as a means of communicating information during warlike operations: (1) those who employ false pretences and who may be treated as spies; (2) those who identify themselves with the enemy and may be treated as ordinary prisoners of war; (3) those whose identification with the enemy is not proved, and whose presence is merely a nuisance, and who after prohibition may be excluded from the zone of operations. There can be no question that neutral subjects are no less liable to be treated as spies than members of the enemy state, whether combatants or non-combatants; and the rule of the Institute does not distinguish between them. The offence of espionage consisting in the acquisition and communication of news by some false pretence, it is reasonable that the belligerent should have the right of enforcing martial law, whether that offence be committed by a person who risks his life for the sake of his country, or a person who for money or some less base motive abuses the privileges of a neutral and acts as the agent of the enemy. If a spy is captured on land, he must by The Hague rule be tried by court-martial before execution; if captured at sea, there is at present no rule to the same effect, and a person arrested as a spy may be summarily dealt with; but at least, in the case of a neutral, by the general principle governing the relations of a belligerent to neutral individuals, a trial should be held.

During the Russo-Japanese War the Japanese officers on several occa-

sions [1] tried and condemned as spies certain Chinese magistrates and private individuals and even some military officers who were acting as secret agents for the Russians while within the Japanese lines. But while they were justified in their action as a general rule, since to betray the plans of one belligerent to another while enjoying the immunity of a neutral official constitutes clandestine communication, in one case they seem to have committed the same error as the Russians by branding an unusual means of correspondence as espionage. One Yung came out of Port Arthur in a junk, and after landing in Chinese territory sent information about the Japanese fleet to the beleaguered port by means of doves. He was not captured by the Japanese, but they called on the Chinese Government to arrest him as a spy. It is not clear from the report whether the alleged espionage consisted in the use of doves to convey the information or in the manner by which the information was obtained. If it was in the first, the charge was not good. The use of doves or carrier-pigeons for dispatches may be unusual and embarrassing—though it is a form of communication which dates from the Flood—but there is nothing clandestine or fraudulent about it; and the person dispatching information in this way is no more to be regarded as a spy than a person using a balloon for the same purpose.

A subject which has not yet been considered, but is likely to engage the attention of jurists owing to the rapid advance in the science of aeronautics, is the position of a scout in an aeroplane. Already some of the "flyers" have flown so high as to get out of sight of the spectators; and it is probable that in a future war an army will have a body of aeronauts who, while out of the range and ken of the enemy, will be able by the use of other modern scientific inventions to take full observations of the disposition of the hostile forces. And it is not improbable that a belligerent will issue a manifesto threatening to treat as spies individuals who are captured while or after using aerial machines to obtain information, on the ground that as they were invisible they were acting clandestinely. It is submitted, however, that he would have no more justification than the Russian admiral who declared that a person using novel electrical apparatus would be considered a spy. To obtain information as secretly as possible is not the same thing as to obtain it by clandestine conduct; and, as has been pointed out, there is no espionage in the legal sense without false pretence or disguise. No doubt if an enemy or a neutral aeronaut were to descend secretly from his machine into the belligerent's lines disguised in civilian dress, and there tried to obtain information with the idea of carrying it back to the other side, he might, if arrested, be treated as a spy. But it would be the disguise, not the vehicle of descent, which would constitute him a spy; and he would be in the same position as a person who had made his way into the lines by a less ingenious means of locomotion.

The larger facilities which modern invention affords for obtaining and

[1] Takahashi, *International Law applied to the Russo-Japanese War*, pp. 188*ff*.

communicating information of the enemy's movements and plans render it desirable that the extreme penalty should not be inflicted upon a person captured in the course of such acts, unless there are special circumstances to justify the harshness. According to the general law of nations, the spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining information or conveying it to the enemy. The punishment is mediæval in its severity, and out of accord with the more humanitarian notions which now underlie the laws and customs of war; and both Bluntschli and Hall point out that only in the more dangerous cases should the death-penalty be inflicted. In general, that punishment would be out of all proportion to the crime. There is no trace of moral turpitude in what is made a capital offence by the common law of war, at least where the spy is a subject of the belligerent state; and in many cases he is worthy of admiration. The Hague Convention provides that a spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy must be treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage (Hague Rules, 31). As with a ship which has broken blockade and successfully completed the return voyage, the original offence is expiated by the successful escape, and it cannot be visited upon the offender if he is subsequently captured. At the same time the successful spy may, in the words of the United States Army regulations, "be held in closer custody as a person individually dangerous." And it is submitted that in the ordinary case this "closer custody" would be the fitting penalty for the unsuccessful as well as for the successful spy.

Finally, it may be noted that the term spy is used also of a person who in times of peace is sent by one state to obtain information secretly about the military and naval preparations of another. Since Joseph's brethren went down to Egypt the term has been more loosely applied to any foreign visitor who was suspect. But the peaceful spy proper is a kind of secret agent commissioned by the Government, but liable to be disowned the moment he is discovered. As an ambassador is sent "to lie abroad for the benefit of his country," so the spy is sent to look abroad for its benefit. It is his business to insinuate himself into fortresses and shipyards, to make drawings of strategical positions, to obtain by underhand means information of naval or military designs or of popular movements, or it may be of the intrigues of exiled enemies of his country. It is not considered to be contrary to the comity of nations for a government to employ such an agent, but he does not carry with him any extraterritorial privileges. He has then none of the immunities of a legally appointed agent of a foreign country; his government may approve and profit by his deeds, but openly it expresses disapprobation of the doer when he is found out. But while he has none of the privileges of the ambassador, he is not liable to the extreme penalties with which war-spies are treated. Neither his position nor his offence is recognised by international law. He may

indeed, if apprehended, be excluded from the country where he was taking observations or searching for information, and he may be subject to imprisonment by the municipal law of the country for entering forbidden areas or doing things which are prohibited. In view of the opportunity which the conquest of the air provides for taking observations from a position of vantage, it may become necessary for States to interdict the passage of balloons and airships over their forts and arsenals and dockyards, lest valuable information should be secured by the secret agent of foreign powers. And questions may arise as to the right of the State to control the passage in the air above a certain height. Is the domain in the air larger than that over the sea? May a foreign aeroplane or dirigible balloon be prohibited from passing over a dockyard or a fort when it is more than three miles above the ground? But such questions are rather for the future conferences of international jurists to solve: to-day they are vague speculations, which it would be profitless to pursue further.

FRENCH LAW WITHIN THE BRITISH EMPIRE.

III. POINTS OF DEPARTURE.

[*Contributed by* Mr. Justice Wood Renton.]

In the two preceding lectures I have dealt (1) with the circumstances, and forms, under which French law came to enter, at different points, into the jurisprudence of the British Empire; and (2) with the extent to which that law has maintained its position. It only remains for us now to consider the ground that has been lost. In the absence of any modern commentaries on the law of the Channel Islands, I must content myself with noting a few points of departure for which authority is to be found either in decided cases or in the Reports of the various Channel Islands Commissions, or the legislation of the States.

Provision has been made for the voluntary sale or commutation of seigneurial rights.[1] The *garde noble* was abolished in Jersey by Order in Council as far back as the time of Charles II.[2] Estates tail were sanctioned by an Ordinance of 1615, confirmed by an Order in Council of 1635,[3] but have not, it seems, been extensively introduced.[4] Power to devise realty was given, and representation among collaterals was introduced [5] in 1851;[6] and the law as to wills of immovables has been extended by a law of February 5, 1891, confirmed by an Order in Council of March 20, 1891;[7] and also by a law of 1902 which removed the incapacity, under the law of 1851, of a testator who had children or other descendants, to devise his realty. The immemorial law of descent in Jersey by which, on the death of the owner, the entire estate real and personal goes to the eldest

[1] See *e.g.* Law of October 18, 1859; O. in C. June 30, 1860; Recueil des Lois, ii. 101.

[2] Report of Commissioners for Jersey, 1860-1, p. ix.

[3] Jersey Ordres du Conseil, i. pp. 456, 457.

[4] Report of Commissioners for Jersey, 1860-1, pp. xiv, xv.

[5] *De Quetteville* v. *Hamon* (*Perrée*), (1893) A.C. 532; Law of February 13, 1851; confirmed by O. in C. of April 14, 1851; Recueil, ii. p. 2; and Law of March 26, 1873, confirmed by O. in C. of May 5, 1873; *ibid.* iii. p. 78, extending the privileges of the law of 1851 to great-nephews and great-nieces.

[6] Report of Commissioners for Jersey, 1860-1, p. xviii; Law of June 24, 1851; Recueil des Lois, ii. p. 7.

[7] Recueil des Lois, iv. 181.

son as "principal heir," and can be held by him till partition is claimed by the other children, who also are entitled to participate in the inheritance,[1] has been modified by a law of March 19, 1850.[2] The law as to partition (*partage d'héritage*)[3] and charges on real property[4] has itself been amended. The law as to the accounting of tutors[5] and curators[6] has been greatly strengthened, in accordance with the recommendations of the Jersey Commissioners.

In regard to criminal law there has been, both in Jersey and in Guernsey, a closer approach than in any other department to the law of England.[7] So, in Jersey, confiscation of the property of felons and *felo de se* was abolished in 1870.[8] Certain of the provision of the English Criminal Law Amendment Act, 1885, were applied in 1895;[9] and criminal procedure has been regulated to some extent on English lines.[10]

In Guernsey, a law of 1901 brings the law of evidence into accordance with that of England.[11] Another law of 1907 provides for the protection of women and children on the lines of English legislation. It is said that the influence of English commercial law and procedure has also made itself felt in Jersey.[12]

The Act of Union checked the incorporation of Roman law into the law of Scotland, and whatever tendency to argue on principle instead of on precedent may still be inherent in the Scotch forensic mind, it firmly established the authority of the rule *stare decisis* in the practice of the Courts. Even in the region of family law there had been differences between the laws of France and Scotland. So, French law regarded a man's property as a *universitas rerum*, equally divisible among the heirs of

[1] Report of Commissioners for Jersey, 1860-1, p. xii.

[2] Confirmed by O. in C. of July 15, 1850; Rec. des Lois, i. 507.

[3] Law of April 30, 1891; confirmed by O. in C. of September 26th, 1891. Rec. des Lois, iv. 214.

[4] Law of July 18, 1879; confirmed by O. in C. of February 26, 1880.

[5] Rec. des Lois, ii. 165. [6] *Ibid.* ii. 169.

[7] See for full details as to the criminal law and the law of criminal procedure in Jersey and Guernsey, the Reports of the Channel Islands Criminal Law Commission 1847 (Jersey); 1848 (Guernsey).

[8] Law of February 2, 1870, confirmed by O. in C. of March 31, 1870; Rec. des Lois, ii. 478.

[9] Law of April 11, 1895, confirmed by O. in C. of June 29, 1895; Rec. des Lois, iv. 300.

[10] Law of March 23, 1863, confirmed by O. in C. of March 1, 1864. Rec. iv. p. 201. This law regulates trial by *enquête*, corresponding to trial by jury. There is no trial by jury, I believe, in Guernsey. As to appeal by special leave to the Privy Council in criminal cases, see *Esnouf* v. *A.-G. for Jersey*, (1883) 8 A.C. 304.

[11] I have not had access to this law. The statement in the text is based on a note supplied by the Greffier of Guernsey to the forthcoming *Review of the Legislation of the Empire*, 1898-1908, published under the auspices of the Society of Comparative Legislation, vol. i. p. 167, kindly shown me in proof by the Editor, Mr. Bedwell.

[12] See Mr. Bedwell's paper on "The Office of Jurat in the Royal Courts of Jersey and Guernsey," in 34 *Law Mag. and Rev.* at p. 166.

the same degree, male or female, whereas Scots law distinguished heritage from movables, and gave, as Norman law did also, a preference to males, subjecting the right of primogeniture to the duty of collation. In the last century, fresh and important departures were made. In 1855,[1] one rule deduced from the old doctrine of *communio bonorum* between the spouses, as to whose place in Scottish legal history there has been so much controversy,[2] was abolished. By the previous law, the movable property contributed by each of the spouses to the common stock reverted to the survivor and the predecessor's representatives, on the dissolution of the marriage within a year and a day, without the birth of a living child. This rule, which it had been the invariable practice to exclude whenever there was a marriage contract, was abrogated by the Movable Succession (Scotland) Act, 1855. The same statute [3] also withdrew the right of the representatives of a predeceasing wife to one-third or one-half, according as there were children or not, of the husband's movable estate, which used to be styled "the goods in communion." In regard to the property of married women, Scots law has, since 1855, closely assimilated itself to that of England. A wife's movable estate no longer falls at marriage under the *jus mariti* of her husband.[4] As the result of these changes, the *communio bonorum* now survives in Scotland, if at all,[5] only in the *jus relictæ*.

A still more remarkable assimilation of the law of Scotland to that of England is to be found in the region of the *lex mercatoria*.[6] Between the middle and the end of the seventeenth century there had been enacted in France, on the suggestion of Colbert, a series of great consolidating ordinances. Two of these, the Ordonnance de Commerce of 1673 and the Ordonnance (or, as it is often styled, the Code) de la Marine of 1681, subsequently formed the basis of the Napoleonic Code de Commerce. Scots lawyers appear—equally with their French *confrères*—to have had their attention drawn by these enactments to commercial law. But "this dawning of mercantile jurisprudence was soon overcast" [7] by the failure of the Darien expedition; and the forfeitures that followed the suppression of two Jacobite rebellions of 1715 and 1745, giving rise, as they did, to difficult questions as to "the connection of superior and vassal, the nature and efficacy of destinations in deeds of entail, and the force of real securities over land," [7] concentrated the thoughts of the legal profession in Scotland on the feudal

[1] By the Movable Succession (Scotland) Act, 1855 (18 & 19 Vict. c. 23), s. 7.

[2] See Fraser, *Husband and Wife*, i. 648; Walton, *Husband and Wife*, 149; *Encyclo. Scots Law*, tit. "Communio bonorum."

[3] S. 6.

[4] Married Women's Property (Scotland) Act, 1881 (44 & 45 Vict. c. 21), s. 1.

[5] See the judgment of Lord President Inglis in *Fraser* v. *Walker* (1872), 10 Macph. at p. 843.

[6] See the Preface to the author's editions of Bell's *Commentaries*, and two valuable articles on "The History of Scots Law" by Mr. Sheriff MacKay in the *Journal of Jurisprudence*, vol. xxvi. pp. 113, 225.

[7] Bell's *Comm.* i. pp. viii. *et seq.*

law. "The jurisprudence of mercantile dealings, fitted for times of a different complexion, was almost entirely abandoned."[1] The justice of these comments is, I think, illustrated by the great Institutional Treatises of Stair, Bankton, and Erskine. Stair, the first edition of whose book appeared in 1681, does indeed touch upon bills of exchange and other mercantile contracts,[2] but only as part of his general treatment of the forms of contract known to the Roman law. In Bankton, whose Institutes were published in 1751, the bill of exchange has risen to the dignity of a separate title. In Erskine, some years later,[3] it has again been submerged by a torrent of feudal law. But with the pacification of Scotland there came a revival of industry, and with the revival of industry a demand on the part of the mercantile community for release from the rigours of the old law of *cessio bonorum*, which, while it enabled an honest bankrupt to escape imprisonment, had no effect in freeing him from the living load of his debts without payment in full.

In spite of determined opposition from the legal profession, the Bankrupt Law of 1772[4] was passed, providing, *inter alia*, for the debtors' discharge. This relaxation of the fetters that the old law had imposed upon commerce itself gave impetus to "the outburst of commercial enterprise"[5] which had secured it. There was a fresh advance of the mercantile law in Scotland, and whence should such a development derive its inspiration save from the work of the great Scotchman[6] who, as Chief Justice of the King's Bench, had been devoting his splendid powers to the task of founding the mercantile law of England? And so the gradual assimilation of the mercantile law of Scotland to that of England began. I cannot trace its progress here. It must suffice to say that the early unity between the laws of Scotland and England, which the Ancient League disturbed, has, in the new region of the law merchant, been restored.

In Quebec there have been approximations of the law of the Province to that of England both in commercial and in maritime law. The commercial law of Quebec, at the time when the Civil Code was prepared, was of a somewhat eclectic character.[7] Its condition cannot be better described than in the language of the Commissioners themselves:[8] "In a few instances, the rules of commercial law may be found in the statute book, or in the text of the Ordinances of France, but much of it is to be sought in usage and jurisprudence. Our system, if system

[1] Bell's *Comm.* i. pp. viii. *et seq.*

[2] See Stair, Inst. Bk. I. tit. xi.

[3] Erskine's *Principles* were published in 1754; and his *Institutes*, after his death, in 1768.

[4] 12 Geo. III. c. 72. [5] Ersk. *Prin.* 20th ed. p. 557.

[6] Lord Mansfield. See Campbell's *Lives of the Chief Justices*, ii. 402; *Lickbarrow* v. *Mason*, (1787) 2 T.R. 63, per Buller J. at p. 78.

[7] See Walton's *Scope and Interpretation of the Civil Code of Lower Canada*, p. 21.

[8] Seventh Report, p. 214.

it may be called, has been borrowed without much discrimination partly from France and partly from England; it has grown up by a sort of tacit usage and recognition, without any orderly design or arrangement, and has not yet received any well-defined or symmetrical form from the decisions of our Courts."

The Commissioners accordingly came to the conclusion that any attempt to codify the commercial law in detail would be out of place. "Much," they say,[1] "of what has been established by usage may more safely and conveniently be left to be interpreted in like manner, and to be modified as new combinations and the experience of new wants may suggest. This course is consistent with the history and character of commercial law in all countries. It has always begun in usage, and positive legislation has done little more than to follow, and to declare the general and fundamental rules which such usage has originated."

The influence of these ideas may be traced right through the original treatment of bills of exchange in the Quebec Code.[2] The provisions were drawn to some extent from the Code de Commerce, but were mainly inspired by English, Scotch, and American law.[3] The law as to bills and promisory notes is now, however, governed by the Bills of Exchange Act, 1890,[4] modelled on the Imperial Bills of Exchange Act, 1882.[5] The Civil Code[6] provides that in all matters relating to bills of exchange not provided for in the Code or by the Federal Acts, "recourse must be had to the laws of England in force on May 30, 1849," which is also to govern the law of evidence in the investigation of facts founded on bills, irrespective of whether they were granted by traders or non-traders. Negotiable instruments other than bills or promissory notes, *e.g.* bank notes and bearer bonds, are governed by the general commercial law; and the tendency in regard to these[7] is to follow English authorities.[8] Although the Dominion Parliament has power to legislate "respecting every transaction within the legitimate business of a banker,"[9] the Federal Bank Act, 1890,[10] deals mainly with questions incidental to the incorporation of banks and the issue of notes; and the relations between bankers and their customers are still governed by the general commercial law.[11] The maritime law of Quebec is largely based on the Code de la Marine of 1681 above mentioned, one of the great consolidating Ordinances of the reign of Louis XIV., which "furnished the principles of maritime law to a

[1] Seventh Report, p. 216.

[2] Arts. 2279 *et seq.*, repealed by the Bills of Exchange Act, 1890.

[3] *Ibid.* pp. 218, 220.

[4] 53 Vict. c. 33; Rev. Stats. Can. c. 119.

[5] 45 & 46 Vict. c. 6.

[6] Art. 2340.

[7] Walton, *ubi sup.* p. 53.

[8] See *Young* v. *Macinder*, (1895) 25 Can. S.C.R. 272; *Bank of Montreal* v. *Sweeny*, (1887) 12 A.C. 617.

[9] *Tennant* v. *Union Bank of Canada*, (1894) A.C. 31.

[10] 53 Vict. c. 31; Rev. Stats. c. 29.

[11] *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A.C. 49; *Bank of Montreal* v. *Sweeny*, (1887) 12 A.C. 617.

large portion of the Continent, and is the chief basis upon which the Courts in England, by a series of decisions confirmed and aided by careful legislation, have built up her present system."[1]

The Ordinance of 1681 seems never to have been formally registered by the Superior Council; but an *arrêt* of 1717, establishing Admiralty Courts,[2] is said to have introduced many of its provisions, and for the rest it no doubt established its position as *ratio scripta*. The law of merchant shipping is now governed in Quebec partly by the Imperial Merchant Shipping Act, 1894,[3] partly by a series of federal enactments[4] framed more or less on the lines of corresponding English legislation, and passed in virtue of the exclusive power of the Dominion Parliament to legislate on matters affecting "navigation and shipping."[5] But affreightment,[6] marine insurance,[7] bottomry and respondentia,[8] and the rules as to the transfer and mortgage of registered ships,[9] are governed[10] by the Civil Code. The rules as to all these subjects are based on the Code de la Marine and in some instances on the Code de Commerce.[11] But the Commissioners, in regard to each of them, have drawn largely also on English, Scotch, and American authorities.

I will give a few illustrations of the statement. In case of wreck, or other inevitable obstruction to the voyage, in his own ship, is it the duty or is it merely the right of the master to engage another ship?[12] On this point the French authorities were keenly divided. The Code de la Marine[13] and the Code de Commerce,[14] supported by one body of commentators, concurred in declaring that if the ship cannot be repaired, the master is bound to procure another, and that if he cannot do so he is entitled to freight only for the part of the voyage actually accomplished. What these authorities pronounced to be a duty, other commentators, such as Valin and Pothier, regarded as only a right.[15] For England and America the controversy was settled in the former sense; and the Quebec Commissioners, with these conflicting views before them, adopted the English and American solution.[16] Again,[17] in defining barratry, the Commissioners, following the English[18] and American[19] rule and differing from the law of

[1] Seventh Report, p. 224.

[2] Cases within the jurisdiction (now exercised by the Court of Exchequer; see 54 & 55 Vict. [Can.] c. 29; 53 & 54 Vict. c. 27) of the Vice-admiralty Court are to be "determined according to the civil and maritime laws of England." C.C. (Q.) Art. 2388.

[3] 57 & 58 Vict. c. 60.

[4] See Walton, *ubi sup.* p. 52.

[5] B.N.A. Act, 1867, s. 91(10).

[6] C.C. (Q.) Arts. 2407 *et seq.*

[7] *Ibid.* Arts. 2492 *et seq.*

[8] *Ibid.* Arts. 2594 *et seq.*

[9] *Ibid.* Arts. 2359, 2374.

[10] *Ibid.* Arts. 2359-82.

[11] Seventh Report, pp. 234 (affreightment), 240 (insurance), 258 (bottomry and respondentia). See (1904) A.C. 77.

[12] Seventh Report, p. 236.

[13] Art. 11.

[14] Art. 296.

[15] 1 Kent, iii. 207, 210-12; Carver, s. 547.

[16] C.C. (Q.) Art. 2448.

[17] Seventh Report, p. 248. C.C. (Q.) Art. 2511.

[18] Carver, s. 99.

[19] Kent, iii. s. 304.

France under the Code de la Marine[1] and the Code de Commerce,[2] insist on the element of fraud. "It is evident," they say, "that the benefit of insurance would be materially diminished if any act of unskilfulness, which would include innocent errors of judgment, should have the effect of freeing the insurer from liability." The definition of bottomry and respondentia is avowedly borrowed from Smith's *Mercantile Law*.[3] As a final illustration,[4] I may mention that the Commissioners, differing from the original French law[5] but following the rule of English, Scotch, and American law, have not prohibited loaning upon freight to be earned.

In my first lecture, I adduced authorities showing that the criminal law of England had been applied in the Province of Quebec since 1763.[6] The Quebec Act, 1774,[7] provided that the criminal law of England should continue to be administered in Quebec. By the Federation Act, 1867,[8] criminal law became a matter to be regulated by Dominion legislation; and now the Criminal Code of Canada,[9] which came into force on July 1, 1893, has introduced into Canada the substantive and adjective criminal law of England *en bloc*. The English common law jurisdiction as to crime is still operative, notwithstanding the enactment of the Criminal Code, always subject, however, to the latter prevailing where there is a repugnancy between the common law and the Code.[10]

The Quebec Code of Civil Procedure "does not resemble the French Code of Civil Procedure in anything like the same degree in which the Quebec Civil Code resembles the Code Napoléon."[11] A good deal of it was taken from the Code of Civil Procedure of Louisiana, "and it includes remedies such as writs of injunction, mandamus, and prohibition, which are of purely English origin."[11] The law of proof in civil matters is still French as to its main rules.[12] The law of proof in commercial matters has, since 1785, been drawn from the English rules of evidence.[13] Even in general matters there appears to be a tendency now to assimilate the law of Quebec to that of England.[14]

In St. Lucia change came gradually[15] but surely. By 1844, besides the introduction of English commercial law, of the British currency, and of

[1] Art. 28. [2] Art. 353.

[3] Seventh Report, p. 260. C.C. (Q.) Arts. 2594. See Smith's *Merc. Law*, 11th ed. vol. i. p. 573. [4] *Ibid.* C.C. (Q.) Arts. 2596.

[5] Code of 1681, Art. 4; Code de Comm. Art. 318, abrogated, however, in France by Art. 2 of the law of August 12, 1885; *Ann. de Lég. fran.* 1885, p. 97.

[6] Since preparing the first lecture, I have found further authorities on the point in an interesting brochure by Professor Walton on *The Scope and Interpretation of the Civil Code of Lower Canada* (1907), see pp. 50, 51, generally, and specially as to whether a change of sovereignty *ipso facto* involves a change in the criminal law.

[7] See 14 Geo. III. c. 83, s. 11. [8] S. 91. [9] Rev. Stats. Can. c. 146.

[10] *R.* v. *Cole*, (1901-2) 5 Can. Crim. Cas. 330; *Union Colliery Co.* v. *Reg.* (1900) 31 Can. S.C.R. 87; *Moloche* v. *Deguire*, (1903) 34 Can. S.C.R. 24.

[11] Walton's *Scope*, etc. p. 24. [12] *Ibid.* p. 135.

[13] 25 Geo. III. c. 2, s. 10. See *McKay* v. *Rutherford*, (1848) 6 Moo. P.C. 413.

[14] Walton *ubi sup.* at p. 136. [15] See Breen's *St. Lucia*.

the officer of coroner and justice of the peace, the old Slave Code—the Code Noir of Martinique—had disappeared through the exertions of Mr. Jeremie, the first President of the Court of Appeal, created under the Order in Council of 1831. An Ordinance of 1834 abrogated the old French criminal procedure, with its clumsy system of *instruction criminelle*, its interrogation of prisoners, its examination of witnesses by leading questions, and its trials *par contumace*, equally inefficacious whether the accused did or did not return to the Colony, for in the former case, the proceedings had to begin over again; and, in the latter, the claims of justice were evaded. The old criminal law of France, however, still survived.[1] In 1819 a man was sentenced to twelve months' imprisonment in the chain-gang because he was "vehemently suspected of poisoning."[1] In 1826 it was enacted that in fourteen cases of commercial offences, English law should govern. The Ordinance of 1834, to which I have already referred, concerned itself with procedure only. In 1848 trial by jury was introduced in criminal cases. The need for a reform in the substantive law is strikingly illustrated by a case that happened shortly before that date. A prisoner was indicted for uttering "false money." French law prescribed one term of imprisonment, English law another. The difficulty as to which term was to be applied was solved by the accused being sentenced to both.[1] Another attempt to deal with the state of the criminal law was made in 1851. The preamble to the Ordinance of that year stated that the Royal Court had adopted "much of the criminal statute law of England without having any specific Ordinance introduced as regulating the same." But the Ordinance itself is a mere reproduction of certain English statutes. It left many offences unpunishable. It in no way introduced into St. Lucia the criminal law of England. The criminal law of France was, however, abolished in the Colony by an Ordinance of July 1875; and in 1888 the enactment of a Criminal Code[2] and Code of Criminal Procedure,[3] framed on the lines of English law, completed the departure of St. Lucia, so far as her substantive and adjective criminal law is concerned, from the old French régime.

The English language was made the language of the Law Courts as from January 1, 1842. In recent years St. Lucia has still further assimilated her law to that of England. The distribution of the assets of insolvent non-traders was adopted. Although divorce *a vinculo* is not admitted,[4] provision has been made by local legislation[5] for the grant of protection orders to married women, similar to those made in England under the Summary Jurisdiction (Married Women) Act, 1895.[6] The law of England has been followed as to bills of exchange.[7]

[1] M.S. letter of Armstrong C.J. to the Administrator (Des Vœux), September 14, 1876.
[2] No. 101 of 1888. [3] No. 102 of 1888.
[4] C.C. St. Lucia, Art. 155. [5] Ordinance 3 of 1902. [6] 58 and 59 Vict. c. 39.
[7] No. 11 of 1893: and see No. 8 of 1907.

In Mauritius the English language was tentatively introduced. An Order in Council of February 25, 1841,[1] directed that it should be used for all Ordinances and Proclamations. In 1845 another Order in Council[2] provided that all proceedings in the Courts of Justice should be in English as from July 15, 1847, due regard being had to any reasonable claim to exemption on behalf of any particular person admitted as an advocate or *avoué* at the time of, or within the fifteen years next after, the surrender of the Island.

A tradition of the Bar records the circumstances under which, at the appointed time, the French language made its official exit from the Courts of law. The Assize Court was in session at Port Louis, trying a prisoner for murder, and up to midnight before the appointed day commenced, the proceedings would, of course, be in French. The trial was a heavy one, and the Court sat late. As the fateful hour approached, counsel for the defence was still addressing the jury in the old tongue. At the stroke of twelve he stopped abruptly, and continued his speech in English. It is to be hoped that such a memorable occasion was signalised by an acquittal, at least on the capital charge. To the best of my recollection, I have told this story as it has often been told to me; whether it is true, or merely one of the artistic traditions out of which so much history is made, I cannot say. But I can perhaps supply one adminicle of corroborative evidence of its genuineness by saying that as juries in Mauritius were not, and I think are not, allowed to separate before verdict, in cases of murder, there is no inherent improbability in that part of the narrative which represents the Assize Court as still in session after midnight. I have myself been engaged in the trial of a murder case at Port Louis at half-past eleven p.m. But notwithstanding its formal banishment as the language of pleading from the Courts of Justice in Mauritius, the French tongue has still retained even there a kingdom of its own. Evidence can be, and is, taken in French, where the judges and counsel understand it, without interpretation,[3] and although the leaders of the local Bar speak English with perfect ease, and are, in many cases, men to whom it is a liberal education even in English law for a judge to listen, the forensic asides, prompted by interruption in the course of argument, are not infrequently conducted in French.

How far French law is still in force in Mauritius—and this observation holds good in the case of Seychelles also—is often a question most difficult to answer. For, apart altogether from the express repeal of portions of the Codes by local legislation, there is a wide field in regard to which the possibility of incidental repeal, as for instance by legislation conferring equitable[4] powers on the Supreme Court, or by the introduction (effected

[1] Rev. Laws, iv. 62. [2] O. in C. of September 13, 1845; Rev. Laws, iv. 64.

[3] No. 29 of 1891. Except in the case of the patois "creole"; *ibid.*

[4] Ord. 2 of 1850, s. 3 (as regards Mauritius); O. in C. Aug. 10, 1903; Art. 6 (as regards Seychelles).

in Mauritius in 1904) of the modern English system of pleadings, has to be reckoned with.

The criminal procedure of Mauritius has been in accordance with that of English law since 1853.[1] The Penal Code of 1838—a local adaptation in French and English, printed in parallel columns, of the corresponding French Code—is still in force and maintains substantive French criminal law. For instance, affirmative proof by the Crown of premeditation is essential in cases of murder (*assassinat*) as distinguished from manslaughter (*meurtre*). The same distinction is preserved in the new Penal Code of Seychelles,[2] which indeed is practically a reproduction of the Mauritius Code of 1838. Nor has Seychelles in other matters exerted its new legislative powers by cutting itself adrift from the spirit of the old law.[3] In Mauritius, in matters not dealt with by the Evidence Ordinance, 1881,[4] which preserves,[5] by the way, the French procedure of the examination of the parties to a suit on unsworn personal answers, English law is to be followed.[6] A bankruptcy law[7] framed on English lines but confined to debtors who are "traders," a category from which the sugar-planter is excluded, has superseded the provisions of the Code de Commerce in regard to bankruptcy. But *cessio bonorum* is still recognised.[8]

And now I must draw to a close. That there should have been points of departure from French rules and ideals was inevitable. For the different countries whose systems of jurisprudence we have been considering had become integral parts of the British Empire, and were being brought every day into closer touch with British administration and law. With their political and social growth, new needs arose, which the Customs of Paris and Normandy, and the French Codes, in their original shape, stamped although they were with the imprint of the genius of Napoleon, had not foreseen, and could not satisfy. In France itself, the great bodies of law that had at one point and another entered into or influenced the jurisprudence of the Empire had been undergoing constant change. The legislation of the monarchy had been superseded by the legislation of the Revolution. The legislation of the Revolution, itself divisible into two periods, the first (1789—1794) "a period of progress not always enlightened,"[9] the second (1794—1804) "a period of reaction not always obscurantist," had given place to the Codes. And, later on, the Codes too were changing. So everything—the new strong wine of fresh political and social conditions, that

[1] Ord. 29 of 1853.

[2] No. 10 of 1904.

[3] See, *e.g.*, Ordinances 5 of 1904, and 6 of 1904, consolidating the law of mortgage and registration respectively.

[4] No. 15 of 1881.

[5] Art. 17.

[6] Art. 15.

[7] Ord. 23 of 1887.

[8] See Ordinances 23 of 1856 and 14 of 1864.

[9] See Sir Courtenay Ilbert's paper on "The Centenary of the French Civil Code" in the *Jour. Comp. Leg.* vi. 22; and for details, Mr. Herbert Fisher's chapter on "The Codes" in the volume "Napoleon" (vol. viii.) of the Cambridge Modern History.

refused to be poured into the old bottles, changes in France, and the constant pressure at all points of an atmosphere of English law conspired to substitute English for French juridical ideals and methods within the Empire. So far, the main changes effected have been the introduction, more or less completely, of the English language as the language of oral and written pleadings in the Courts of Justice; the substitution, although not universally, of English for French criminal law and procedure; the tentative adoption of the English law of evidence; and the steady assimilation of the mercantile law of all parts of the Empire to the rules of the law merchant as defined by the English Courts. How far such processes of substitution and assimilation are destined to lead us, the future will show. The old forces that make for change are still at work—new developments, political, social, and commercial, that have to be met, increasing freedom—of which the recent laws simplifying the formalities of marriage [1] and protecting the earnings of married women [2] afford striking instances—in France itself in the treatment of the ideals and the rules of the Codes, and in every part of the Empire, far better understood, and far stronger than ever before, the pressure of an atmosphere of English law. There is wide room for speculation, and for difference of opinion, as to the mixed questions of policy and law that such considerations involve. But on one point at least all lawyers will agree. The maintenance of French law within the Empire—which even the Roman and the Muhammadan conqueror had recognised not as a personal law of the inhabitants of certain conquered and ceded colonies, but as a territorial law—has borne its own part for good in the making of the jurisprudence and the legal administration of the Empire. It has enlarged our outlook. It has introduced us to a world of which no lawyer will ever be content to lose sight who has once entered it, seen its wealth, strength, and beauty, and felt its abiding charm.

[1] Law of June 21, 1907: *Ann. de Leg. fran.* 1907, p. 159.
[2] Law of July 13, 1907: *Ann. de Lég. fran.* 1907, p. 199.

THE HISTORY OF THE ROMAN-DUTCH LAW.

[*Contributed by* PROFESSOR R. W. LEE.]

To trace the course of a legal system from its beginnings in an obscure and distant past through infancy and adolescence to maturity is a task which demands gifts of intellect scarcely to be found in combination. An untiring patience in amassing material, a sane judgment of the material collected, sympathetic insight into obsolete modes of thought, an ever-present sense of historical continuity—such are some of the qualities which work of the kind requires. It need therefore be no surprise if amongst legal historians those have succeeded best who have been content to reach an acknowledged mastery in a limited field. None the less is gratitude due to any competent writer who, satisfied with the useful part of compiler and interpreter, presents to the student a general view—may we say the biography?—of this or that system of jurisprudence. Indeed works of this second class play an indispensable part in legal education, for they are at the present day, more than the oral lecture, the channel through which the results of original thought and original research become the common property of the student and the practitioner.

The above reflections may be permitted by way of introduction to two valuable works on the Roman-Dutch Law put forth within the last few years, the first by a Dutch Professor, the second by one of His Majesty's Judges in the Transvaal Colony.

Prof. Fockema Andreæ's position as a jurist, historian, and mediævalist is well known to all whose studies lie in the same direction. For others it may be said that he is the senior teacher in the Faculty of Law in the University of Leiden, where he occupies the Chair of Old Dutch Law and Legal History. His investigations in this field have been given to the world in his *Bijdragen tot de vaderlandsche rechtsgeschiedenis* and in his annotations of Grotius' Introduction to the Jurisprudence of Holland. More recently, in the year 1906, he published under the title of *Het Oud-Nederlandsch Burgelijk Recht* a systematic exposition of the Old Dutch Law such as it was before the reception of the Roman Law in the fifteenth and sixteenth centuries.

The very name of the Roman-Dutch Law indicates its composite nature. It has been the battle-field of controversy between Romanist and Teutonist.

Of these the one places the foundation of the system in the codification of the Emperor Justinian. He consults Groenewegen's *De legibus abrogatis et inusitatis in Hollandia* to see how far the modern law has departed from its civil law original. He finds the continuity of that original vindicated in Voet on the Pandects, Vinnius on the Institutes, and other Romanising jurists of the seventeenth and eighteenth centuries. To writers of this school the Roman-Dutch Law is the Roman Law in Holland, the books and titles of the Pandects are the divisions and the sub-divisions of the modern law. Very different is the view of the Teutonist. The Roman-Dutch Law for him is Dutch Law overlaid with Romanism. From Voet he appeals to Grotius and Bynkershoek. But the true light of the word is to be found not in any text-book writer or publicist, but in the *bronnen* and *oorkonden*—the original and contemporary records of the old law of the Netherlands. Prof. Fockema Andreæ is, of course, a Teutonist, though he displays no hostility to Romanism. Nevertheless the Dutchness of Dutch Law is his theme. His success lies in presenting this law as a system, not as a mere congeries of conflicting customs. His work points to the conclusion that Holland could have got on well without the Roman Law, and indeed, far more than is usually supposed, succeeded in doing so.

The second work to which we wish to direct attention is the *History of the Roman-Dutch Law* by the Hon. J. W. Wessels published in the year 1908. This book, as the learned writer explains in his preface, has grown out of a series of articles contributed to the *South African Law Journal*. Unlike Prof. Fockema Andreæ's work, which is mainly expository and only incidentally historical, Mr. Justice Wessels' book is both historical and expository. Part I. deals with the General Development of the Dutch system of law which it traces *ab ovo usque ad mala* from the Early German period down to the Dutch Republic and so to the anglicised Roman-Dutch Law of South Africa. Part II. deals with the Law of Persons, Things, and Obligations. The book is intended for the use of students of law, to whose attention it may be very cordially commended. We may add that the Hon. J. G. Kotzé, Judge President of the Eastern Districts Court, is now contributing to the *South African Law Journal* a very extended "review" of Mr. Justice Wessels' book. If this too is published in book form, as it is to be hoped it will be, the student of the Roman-Dutch Law will be very happily situated as regards the means of historical information.

We return to Prof. Fockema Andreæ's book, which, being written in Dutch, is probably less accessible to readers of this Journal. We shall give a sketch of its contents and direct special attention to some matters of particular interest.

The history of the Roman-Dutch Law falls roughly into four periods: the Germanic, the Frankish, the Feudal, and the Republican. The first of these extends from the beginnings of German history to the accession of Clovis. The second passes gradually into the third as the feudatories of the Frankish

monarchy establish a *de facto* independence. It ends with the Declaration of Dutch Independence on July 26, 1581. The third period extends to the year 1806, in which Louis Bonaparte became King of Holland. Prof. Fockema Andreæ's treatise does not rigidly adapt itself to these historical landmarks. This is impossible for the reason that the law of each period passes insensibly into the next, and that the development of institutions was not uniform in the several provinces. Stated generally, however, his chief concern is with the third period. He disclaims the intention to entertain a fresh discussion of the two earlier periods, which have been fully dealt with by French and German authors. The last period, again, receives attention only so far as it is the historical outcome of that which precedes it. Of Voet and the other writers of his time we hear little. Their views are seldom cited and usually only to point out their mistakes.

The sources from which the old law is derived are seven in number. *First*, the privileges granted by the Counts of Holland and other feudal superiors. *Secondly*, collections of customary law and the municipal ordinances (*Keuren*) of the towns. *Thirdly*, judicial decisions. *Fourthly*, formulas of process. *Fifthly*, legal treatises and *projets de loi*. *Sixthly*, ordinances of the Counts. *Seventhly*, codifications of provincial law, which, however, in point of date belong principally to the following period. Under each of these heads a great wealth of original authority is available, partly consisting in the older compilations, such as Fr. v. Mieris' *Groot Charterboek der Graaven van Holland*, partly the result of the invaluable recent labours of the writers associated with the *Vereeniging tot uitgave van het oude vaderlandsche recht*.

Prof. Fockema Andreæ's first chapter deals with the Law of Persons, *i.e.* the sorts and conditions of men. From this, two subjects may be selected for particular mention—the unfree and the corporation. Slavery may be left out of account, for after the Frankish period it plays no great rôle in the domestic institutions of the Netherlands. Far otherwise was it with the half-free (*halfvrijen*, *hoorigen*, *liti*)—a class of men which begins with the beginnings of Dutch history and was still in existence at the end of the eighteenth century. These men present close analogies to the villeins in England. They were persons, not things, and thus far free, but they were *ascripti glebæ*. They were attached to the manorial estate (*heeren-hofstede*) of a great landowner. They were alienable with it and not apart from it. Dutch Law therefore, it seems, knew nothing of villeins in gross. Their status and rights were determined by manorial custom. They did their suit in the lord's court (*hof-gerecht*), in which they were, unlike the English copyholder, not only suitors but also judges. In two important respects their condition differed from that of the analogous class in England. In the first place they seem at an early date to have enjoyed security of tenure against their lords and the right of asserting it in the lord's court, as well as in the ordinary law-courts. Along with or in consequence of this

went the right of alienation, of intestate succession, and of testamentary disposition. The lord retained sometimes a concurrent right of succession, in other cases only the claim to a heriot (*Keurmede*). On the other hand the Dutch villeinage—herein differing markedly from villeinage in England—remained through the whole of its history a disqualification in personal status. If a freeman accepted a villein holding (*hoeve*) he became himself unfree. He must enter into the "echte."[1] He must win *goed en bloed* for his lord. Nor did the progress of time, though it brought mitigation in villein-status, fundamentally affect it until the Declaration of the Rights of Man put an end to it in 1795. This was not an unmixed blessing to the villeins, for Prof. Fockema Andreæ tells us that villeinage and villein service being thus ended, the lords in many cases claimed to resume the villein holdings into their own hands—with what success in most cases does not appear.

Professors Pollock and Maitland and other writers have taught us how slowly the idea of the juristic person assumed its modern form. Prof. Fockema Andreæ's researches point to the same conclusion. Under the title *Rechts-personen* he deals with gilds and benevolent foundations. Neither of these classes was a corporation, but the first, at all events, tended to become such. The process had gone some way when after 1549 the Cecilia gild at Bommel possessed "four silver beakers" and another gild owned pigs. "Men had become conscious of the existence of a person, a separate subject of property (*vermogenssubject*)." But that the gilds were so considered in the eye of the law does not appear. The few contrary indications in the writers are due to Roman influences.

Gifts *ad pias causas* were in Frankish times generally made to the "Church." But the phraseology is bafflingly various. The gift is made now to the saints, now to the reliques or to the place where the reliques are kept, or to the church dedicated to a particular saint, to the cloister founded in his honour, to a priest for a defined purpose. All this finds abundant parallels in our own early history (P. & M. vol. i. pp. 499 and ff.). More typically Dutch is the question of the *hofjes*—the eleemosynary foundations familiar to all travellers in Holland. In whom was the ownership vested by the pious founder? It is wellnigh impossible to say. In one instance alone is the foundation, as such, instituted heir. Often the testator merely directs the establishment of an almshouse, and the application thereto of a capital sum or yearly rent. Sometimes the gift is expressed to be made directly to the intended beneficiaries, *e.g.* to poor students of theology. Sometimes—and here we are on the road which leads in English law to uses and trusts—there is mention of a "manufidelis" or "executors," who were also, in some cases, to be "regents" of the hof. If the foundation is created by act *inter vivos*, the settlor (as we should call him) assigns and renounces the trust fund and confirms his act by a written stipulation placed

[1] Alle hoorigen van dezelfde klasse, tot denzelfden hof behoorende vormden samen eene "echte."—vol. i. p. 41.

in the hands of a public notary.[1] But the notary is neither the transferee nor the promisee. The promise, if it is made to any one, is made to the persons who are to benefit by it. Enough has been said to illustrate the extreme obscurity of the legal situation hereby created. In practice it appears that the "foundations" were usually administered by the "family" or by some relative (presumably heir) of the founder, and that no questions were asked so long as the persons concerned acted in accordance with the founder's wishes. Prof. Fockema Andreæ implies that if they failed to do so they could be called to account—by what process of law he does not say.

The second part of the first volume treats of the law of things. Space does not admit of a detailed discussion of the matters of interest in this chapter, amongst which special mention may be made of the section on landed ownership in general and that on the Dutch theory of possession. Prof. Andreæ is a whole-hearted believer in the "mark," of which clear indications exist in most of the provinces of the Netherlands, though not in Holland or Zeeland. Our old friend the "Common of Shack" (*Sir Miles Corbet's Case*, 1 Rep. 83a) has its parallel in the province of Drenthe, where it was known as the "esch."[2]

Upon a general view, it may be said that the Dutch system of land tenure was in some respects less, in other respects more, rigidly feudal than that of England. In the first place the feudal system never prevailed in the Netherlands to the exclusion of allodial ownership. The latter existed side by side with the former and in case of doubt there was a presumption in its favour.[3] On the other hand the feuds were exclusively military in character. There was nothing exactly corresponding to our tenure in free and common socage.[4] The duty of knight service fell indeed into disuse and was contested by the states in the year 1566. But it was never expressly abolished. The feudal tenants were called out for service in the *Landweer* as late as 1567 and 1573. Allodialisation—with the consequence of extinguishing feudal duties—was however permitted, subject to restrictions, and was occasionally effected by statute. We are told little of the burdens of the feudal tenants, which perhaps were not so onerous as with us.

Side by side with feudal tenure (*Leenrecht*) is found an institution known as Tijnsrecht (census-right) or erfpacht (hereditary lease). This was a lease for an undefined period subject to the payment of an annual sum, and sometimes to the render of certain services. The tijnsman, *i.e.* the occupier

[1] An example is cited from the year 1455 which concludes—"stipulatione per nos in manibus notarii publici infrascripti, vice et nomine omnium quorum interest, seu interesse poterit, quale in recipientium præstita, subsecuta"—vol. i. p. 165.

[2] De esch was een, in onafgesloten akkers verdeeld bouwland. Elke akker had een bijzonderen eigenaar, maar tusschen den oogst en de bezaaiing mocht ieder der Eigenaars in den geheelen esch vee drijven—vol. i. p. 187.

[3] Voet, Digressio de feudis, ad lib. 38 Pandect, § 4.

[4] We find something very like it when a great proprietor made a court for his tijnsmannen—vol. i. p. 320.

of the land, seems to have held originally merely for his life. But in course of time his position became improved. He obtained freedom of disposition *inter vivos* or by will, and his intestate heirs took by succession. Finally, this kind of holding became in effect ownership subject to a perpetual quit-rent redeemable by the occupier, and was assimilated by the Romanist writers with the Emphyteusis of the Civil Law.

The contractual relations of letter and hirer of land may be briefly dismissed. It was questioned whether they created a real right, and in particular whether the hiring determined if the property let to hire was sold by the hirer to a third party. Practice varied. The older rule, *koop breekt huur*, tended to give way before a principle more favourable to the hirer, *breekt koop geen huur*. The uncertainty of the old law in this regard has proved a legacy of perplexity to the Courts of South Africa (Wessels, Part. II. chap. xx.).

Prof. Fockema Andreæ's second volume is devoted to Obligations and Family Law. Grotius in a well-known passage, after speaking of the Roman *stipulatio*, continues: "But as the Germans from times of old esteemed no virtue higher than good faith, these subtleties were not adopted by them, but it was the rule and practice that all promises based upon any reasonable cause in whatever terms expressed and whether the parties were together at the same place or not gave a right both of action and exception." [1] Many other writers hold the same language.[2] How unfounded this view is appears from Prof. Fockema Andreæ's pages. In Holland, as elsewhere, the history of contract is the history of a transition from form to formlessness. In the earliest period contractual obligations were unknown, and no one thought of doing anything for nothing. The typical instances of contract are sale and exchange, both reciprocal, both immediate in operation. Only gradually does the idea of an enforceable promise develop. At first, the State being still weak, the promisee takes as pledges for performance perhaps some object of ownership of equal or greater value than the thing contracted for, perhaps the person of the debtor himself or of some other on his behalf (wedde, *vadiatio*). Later the *vadiatio*, while continuing necessary to bind the promisor, becomes merely symbolical; some matter of little consequence—a *festuca*—is handed over to the creditor. Even this, in turn, is dispensed with. The debtor pledges his right hand, his good faith, his honour, and this by oath. Add to these the handshake, the God's penny, the contract in the presence of the Court, the written act. We are still only moving in the direction of formlessness. Of the requirement of consensus of minds, of the avoidance of a promise obtained by fraud, there is little or no indication.

The doctrine of *causa* or *oorzaak*, of which, it is to be feared, we have not yet heard the last, receives very little notice and that, it seems,

[1] Grotius, Introduction, 3, 1, 52 (Maasdorp's translation).
[2] Wessels, pp. 572 and ff.

as much as it deserves. This is what Prof. Fockema Andreæ says about it : [1]

> Writers of the period of the Republic, here as elsewhere, ensnared by a misconceived Roman terminology, sometimes speak of the cause of the obligation, of the promise. In the sources the matter is practically not mentioned. The only time that the word is met with its meaning is very transparent. The Landrecht of Oldambten of 1618 says that all transactions are null and void which are against good manners, and have their origin in dishonourable causes. In my view the sense of this passage is free from doubt. An unpermitted, dishonourable cause is a circumstance which brings the transaction in conflict with good morals, is "against good manners." . . . The cause then is the object which the person acting has in view.

This, it may be said in passing, is precisely the meaning which Dekker assigns to the word in his often-quoted note to Van Leeuwen. [2]

A very excellent specimen of Prof. Fockema Andreæ's handling of an extremely intricate subject is his section on intestate succession. Here indeed the law seems to dissolve into a very chaos of local customs. It is what English law would have been if the King's judges had never sat at Westminster and gone on circuit through the counties. Every one at all conversant with the Roman-Dutch Law has heard of the Aasdomsrecht and the Schependomsrecht, and of the legislation of the States of Holland in the matter of intestate succession in the last twenty years of the sixteenth century. But this, of course, is only a small part of the story. Every province and every district of every province had its own customary law, which often differed widely from that of neighbouring regions, as well as from itself in earlier or later stages of development. Add that the sources are seldom fully satisfying and often of very late date. From such materials the historian must construct his theory. As a single instance of the varieties of local custom may be mentioned the case of a surviving parent in relation to the succession to a child dying without issue. By the Aasdomsrecht (the law of North Holland) he takes the whole of the deceased's estate; by the law of Friesland and of part of Groningen he takes the half; by the Schependomsrecht (the law of Zeeland and South Holland) and in another part of Groningen he takes nothing. As to the sources of the Aasdoms and Schependoms systems, Grotius [3] refers them respectively to the customs of the Frisians and of the Franks. Prof. Fockema Andreæ in his Annotations to Grotius published in 1895 reverses this. "The Aasdoms law," he says, "seems least far removed from the Frankish. . . . In many respects the Frisian law comes nearer to the Schependoms law." In his latest work—if we have not failed to grasp his meaning—he does not dissent from the view that the Aasdoms law too may

[1] Wessels, vol. ii. p. 15.

[2] Kotze's translation, vol. ii. p. 10. Mr. Justice Maasdorp's comment in his *Institutes of Cape Law*, vol. iii. p. 41, n. 121, is, it is submitted, unfounded.

[3] Grotius, Introduction, Book ii. ch. xxviii.

be derived from the Frisian law at an earlier stage of its history. The Aasdoms law itself, he thinks, is not known to us in its original form. Perhaps further light will be thrown upon the question in the forthcoming second edition of the Annotations.

Here we bring our notice of Prof. Fockema Andreæ's book to an end. One word in conclusion, and that on a matter of practical interest. If the Roman-Dutch Law be, as is suggested, more Dutch than Roman, does it follow therefore that Voet is an *ignis fatuus* and that it is but lost labour to thumb the Pandects? As regards the historical study of the Dutch Law the answer may be left to those whom it immediately concerns. But the question has its importance in relation to the Roman-Dutch Law in the British Colonies. Here we are one remove more distant from the ancient institutions of Holland. Each jurisdiction will decide the matter in its own way in accordance with local usage and the traditions of the Courts. In South Africa Dutch authorities are freely cited; in Ceylon, we believe, practically never. In the last-named Colony the Romanists rule unchallenged. Nor in South Africa is Voet likely to be displaced. Such is the opinion of Mr. Justice Wessels,[1] and no one will be disposed to disagree with him. There may perhaps be elements of permanence in the Roman Law which make it more easily adaptable to changed conditions than is the case with the native law of Holland. However that may be, the study of the older Dutch law not only claims attention by reason of its intrinsic interest, but also, if we are not mistaken, will supply the key to some of the obscurer passages in Voet's Commentary. Certainly no legal system can fail to derive benefit from the intelligent study of its principles and its history. For the opportunity of such study the Roman-Dutch Law is indebted to Prof. Fockema Andreæ and to Mr. Justice Wessels.

[1] p. 328.

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REVIEW OF LEGISLATION, 1908.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.]

Readers of Sir John Macdonell's admirable introduction to the decennial digest of the Legislation of the Empire know what to expect in these annual summaries. The Legislation of 1908 strikes the familiar note—variety of detail, homogeneity of general features and tendencies.

The provincial Legislatures of Canada are still wrestling with the liquor traffic.

Of the hundred and twenty-five pages containing the Acts passed by the Commonwealth of Australia, seventy are occupied by the Customs Tariff Act of 1908, with its long and comprehensive schedules. Another Act made provision for invalid and old age pensions.

The activity of the local Australian Legislatures does not appear to have been materially diminished by the establishment of a Central Legislature. Among the subjects which have engaged their attention are old age pensions, industrial disputes (including provisions for industrial courts, industrial boards, and a minimum wage), the valuation of land and the taxation of "unimproved values," the adulteration of food, and rabbits. South Australia has passed an elaborate electoral code. Queensland has taken power to try interesting experiments with the referendum. One of its Acts for 1908 provides that when a Bill passed by the Legislative Assembly has been twice rejected by the Legislative Council, the Governor in Council, after the close of the session in which the Bill was rejected a second time, may, by proclamation, direct that the Bill be submitted to a referendum of the electors. If the referendum vote is in favour of the Bill, it is to be presented to the Governor for assent, and if the assent is given it becomes an Act of Parliament as if it had been passed by both Houses. Another Act of the same year provides for a referendum to the electors on the question whether religious instruction shall or shall not be given in State schools, and prescribes the form of ballot-paper to be used.

In South Africa the Transvaal Legislature had to pass a large number of measures dealing with such subjects as the administration of railways,

the organisation and discipline of the public service, the fencing of farms, the formation and management of co-operative agricultural societies, irrigation and water supply, and closing hours in shops. All these are of the usual modern type. But a curious link with the Old World is supplied by an Act which, while laying down general rules for the prescription of actions, repeals Article 16 of the Placaat of the Emperor Charles V., dated October 4, 1540, relating to the same subject.

In West Africa (Ashanti and Northern Nigeria) ordinances for dealing with fetish worship, ordeals, and witchcraft are still found necessary, and Southern Nigeria has been trying some interesting experiments in legislation.

The review includes foreign as well as British legislation, and Mr. Newton Crane's account of the legislation of the United States is full of interesting information. The duration of the ordinary legislative session is short, and the rapidity with which laws are passed is remarkable. For instance, in a session of forty days Oregon succeeded in passing 294 laws and resolutions. The constitutions of the several States impose restrictions on the power of making laws, with the result that laws made are constantly being declared by the Courts to be unconstitutional. Then come amendments to the constitution for the purpose of getting over the judicial decisions. In the year under review ninety-eight such decisions were accompanied or followed by about one hundred constitutional amendments.

The Senate of the United States consists of senators elected by the Legislatures of the several States, each Legislature electing two. For many years a desire has been apparent throughout the country, and particularly in the Western States, to substitute a system of direct popular election. But this could only be effected by an amendment of the constitution of the United States, a very difficult operation. As a temporary expedient several States have passed laws providing that at the primary elections for the nomination of members of the State Legislatures every voter may indicate his choice for senator. This would be a direct mandate from the people which could legally, but could not safely, be disregarded.

The status of corporations, railway accommodation and charges, inheritance, marriage and divorce, and the sale of intoxicants and cigarettes are among the numerous subjects with which the State Legislatures have been engaged.

France has amended the law relating to the discharge of bankrupts and the law relating to divorce. The new divorce law provides that when the separation of husband and wife has lasted three years, the judgment must, as a matter of right, on the application of either party, be converted into a judgment of divorce.

A law modifying Art. 303 of the Code of Criminal Procedure places limitations on the right vested in the president of a criminal court to enter the room where the jury are deliberating.

The most important Swiss Act of the year is a federal law on insurance contracts. Provisions on this subject had been inserted in the first draft of the federal law of contracts, but were struck out for further consideration. They are now embodied in a separate law.

Italy has been busy with much social legislation. It has passed laws relating to primary education, to the prohibition of night work, to workmen's insurance against accidents, and to the dwellings of working men.

A detailed review of German legislation is postponed till next year.

FOREIGN.

1. CHINA.

The next number of the Journal will contain an account of the new Criminal Code by M. Wang.

2. EGYPT.

[*Contributed by* W. E. Brunyate, Esq., C.M.G., *Khedivial Counsellor.*]

Laws of general public interest—11.

Criminal Law.—Law No. 2 allows children to be committed to a reformatory who (1) are found begging in the streets, or (2) are homeless orphans, without visible means of subsistence, or (3) are beyond the control of their parents. Unlike committals for more serious offences under the criminal codes, such committals are for an indeterminate period; but a child is, in any event, liberated on attaining the age of eighteen years.

Law No. 5 authorises the committal of habitual thieves and other cognate offenders to a special penitentiary, again with an indeterminate sentence. The period of detention may not exceed six years in certain cases or ten years in others. The discipline of the establishment is left entirely for rules.

Education.—Law No. 1 aims at co-ordinating all establishments for the study of Moslem theology, from the University of Al-Azhar downwards. A Superior Council is created, composed principally of Uloma of the Azhar, and also Administrative Councils for the principal establishments. Very wide rule-making and other powers are vested in the Superior Council independently of the Government, and the Chancellor of the Azhar is given a general power of supervision over such establishments in general and over the personal conduct of all persons devoted to the study of the Moslem religion, whether in a recognised scholastic establishment or elsewhere. Courses of study are divided into three periods, each of not less than four years. The earlier measures taken by the Superior Council led to a strike of the University students.

Finance.—Law No. 1 (*bis*) gives the Finance Ministry power to order special inspections of the accounts of the Mixed Tribunals. Law No. 7 is the annual Budget.

Military Service.—Law No. 6 attempts to put an end to fraudulent claims to exemption from military service by reason of Beduin origin by the taking of a census of all male Beduins. The census is to be conducted by a commission of Beduin Omdehs, presided over by a delegate of the Ministry of War.

Public Service.—Law No. 3 assimilates the leave of magistrates of the Native Tribunals to that of other public servants. Law No. 4, which was passed in connection with a general readjustment of pay, abolishes the grant to the staff of the Native Tribunals of a share in the annual receipts of these Tribunals. Law No. 9 raises the pay of various grades of military officers. Law No. 10 provides for replacing the Under-Secretary of the Ministry of the Interior, as regards acts which are by law required to be done by him, during a vacancy in the office.

Religious Communities.—Law No. 8 transfers the power of nominating the Vice-President of the Council of the Orthodox Coptic Community from the Council itself to the Patriarch.

3. FRANCE.

[*Contributed by* M. René A. Faux, *Avocat, Paris.*]

Decree regulating the Appointment of Judges (February 13-18, 1908).

Art. 1.—No one can be appointed to the judicial bench in France, Algeria, or Tunis unless he complies with the requirements of the Law of April 20, 1810, and, moreover, has succeeded in satisfying the examiners in a professional examination, whereof the programme is defined by a ministerial order [arrêté ministériel], with the exception of those comprised in the provisions of Art. 15, or belonging to the categories specified in Art. 16.

Art. 2.—Those complying with the provisions of the Law of April 20, 1810, are only admitted to pass the examination:

(1) Doctors and Licentiates of Law who furnish proof that they have served a *stage* of one year at the Ministry of Justice or at the Parquet (Public Prosecutor's Office) of either the Court of Cassation or a Court of Appeal or Tribunal of the first class.

(2) Doctors or Licentiates of Law who supply a certificate of two years' service in the office of an avoué (corresponding approximately to our articles of clerkship to a solicitor).

(3) Those holding special diplômas or medals issued by a recognised Law College.

(4) Those who have filled the position of Secretary of the Chamber of Avocats of the Court of Appeal, Paris.

Law modifying the Law of December 30, 1903, regulating the Rehabilitation [discharge] of Bankrupts (March 23-24, 1908).

Arts. 1 and 2 of the Law of December 30, 1903, referring to Arts. 605,

607, 608, 612 of the Code of Commerce, already altered by that Law, are modified and completed in the following manner:

(1) The time during which a bankrupt (failli simple) is deprived of his right to vote at elections is reduced from ten to three years.

(2) The delay of five years that formerly had to elapse before a bankrupt could apply for his rehabilitation is abolished.

(3) The right of rehabilitation without any formality is granted to bankrupts and to persons who have obtained the benefit of a "judicial liquidation" (liquidation judiciaire) ten years after the judgment has been delivered.

(4) The obligation of advertising the application for the rehabilitation, by way of posters in the Civil Tribunal, is abolished.

(5) The time (formerly the duration of the case) during which the creditors of a bankrupt applying for his rehabilitation have the right to enter an opposition is reduced to one month.

(6) The various documents necessary for the rehabilitation procedure are exempted from the payment of stamp registration duties.

(7) The provisions of this Law are extended to Algeria and the French colonies.

(8) The inscription of the judgment of bankruptcy on Form No. 3 of the "casier judiciaire," which is delivered two years after the judgment, is abolished.

In fact, the present Law completes that of December 30, 1903, which had already softened the rigour of the Code of Commerce.

Law modifying Arts. 41 and 64 of the Law of March 21, 1905 (April 14-16, 1908).

Art. 1.—The men of the "Réserve de l'Armée Active" (active army reserve) are, during the time they belong to such reserve, under the obligation of serving two periods of military drill: the first of a duration of twenty-three days and the second of seventeen days, instead of the two periods of twenty-eight days each formerly obligatory.

The men belonging to the "Armée Territoriale" (territorial forces) are subject to one period of military drill of nine days (instead of thirteen).

Law for the Repression of Offences against Public Morality (April 7-9, 1908).

This Law extends to the sale or to the offer, even privately, to anybody, whether minor or adult, of pamphlets, books, publications, pictures, or objects of any nature whatsoever referred to in Art. 1 of the Law of August 2, 1882, the penalties which were formerly applicable only to the same offence if committed in public.

In other words, it does not make any difference between the "outrage aux bonnes mœurs" (whether public or private) against a minor and the same offence against an adult.

Law concerning the Prostitution of Minors (April 11-15, 1908).

It is with the object of putting an end to the arbitrary rules of the police

(police des mœurs) and to the uncertainty of the jurisprudence that this Law has been elaborated.

The main object of this Law is to take away from the police the right of deciding the fate of the "mineur livré à la prostitution," and moreover to substitute, in place of the illegal and arbitrary penalty of imprisonment, the system which has prevailed for a considerable time in all the Laws concerning child offenders, *i.e.* the system of reformatory education.

According to Art. 1 of the present Law, the Tribunal Civil sitting "en Chambre du Conseil" is competent to decide whether the minor of eighteen shall be handed back to his or her family or be placed in a public or private establishment, or entrusted to the care of a relative or of a stranger until his or her majority or marriage.

Art. 3, one of the most important of the Law, regulates in what circumstances the minor who prostitutes her or himself in public (sur la voie publique) may be called before the Tribunal by summons (instead of arrest) for the first offence, and service of a copy of such summons on the parents or guardians or persons having the custody of the said minor.

In the event of a second offence, the minor must appear before the Procureur de la République (approximately Public Prosecutor), who shall keep him in custody until the above-mentioned persons have answered a summons addressed to them by the Procureur de la République; should they not appear, or should they be unable to look efficiently after the child, the minor shall be sent before the Tribunal, which shall decide the case; the same shall apply in the event of a third offence within eleven months from the date of the first one.

Law relating to the Temporary Protection of Industrial Property in foreign international, official, or officially recognised exhibitions, and in exhibitions organised in France or in the colonies with the authorisation of the Administration or under its patronage (April 13-15, 1908).

Up to the present time, France, which had been the first to propose the Convention of March 20, 1883; for the protection of industrial property, modified by the additional Article of Brussels of December 14, 1900, had not complied with the provisions regarding temporary protection during exhibitions.

This might have been very dangerous for French subjects exhibiting in a foreign country. The object of the present Law is to remedy this danger.

This temporary protection granted to inventions capable of being patented, designs and industrial models, and to trade marks, in favour of exhibitors regularly admitted to foreign international exhibitions, will hold good for a period of twelve months from the date of the opening of the exhibition.

Law relating to Divorce, modifying Art. 310 of the Code Civil (June 6-7, 1908).

The first paragraph of Art. 310 Code Civil is altered as follows: When

the separation between husband and wife shall have lasted for three years, the judgment shall be, by right, converted into a judgment of divorce, upon the application of either party.

The costs of the application shall be borne by the party against whom the judgment of separation has been delivered, even should this be the original petitioner, and apportioned equally between them if the judgment has been delivered against them both (à leurs torts respectifs).

The provisions of the judgment of separation granting alimony to a married woman who has obtained a separation hold good in any event.

This modification was absolutely necessary on account of the hostility of some Courts to entertain applications for conversion of separations into divorce.

In other words, the jurisprudence was incoherent and there was a necessity of fixing it.

Law granting to Women the right of being elected to the "Conseil des Prud'hommes" (Court for dealing with disputes between master and servant) (November 15-17, 1908).

The Law of March 27, 1907, refused to women the right of being elected. The present Law grants them this right under the same conditions as to men.

Law modifying Art. 343 of the Code of Criminal Instruction (December 10-12, 1908).

The present Law has for its object the maintenance, subject to certain conditions, of the practice with regard to the right vested in the President of the Criminal Court to enter the room of deliberation of the jury.

Undoubtedly it is necessary for the members of the jury to apply to the knowledge of the President in certain cases. It is very difficult for these "judges of a day," however intelligent they may be, to grasp immediately the niceties of the complicated machinery of the law.

Nobody will be allowed to enter the jurymen's room during their deliberations for any reason whatsoever without a written authorisation from the President, who himself may not enter it, unless his presence is requested by the foreman of the jury, and then only accompanied by the prisoner's counsel, the "Ministère public" (approximately Public Prosecutor), and the Registrar of the Court.

4. GERMANY

[*Contributed by* E. J. SCHUSTER, ESQ., LL.D.]

The Imperial Legislation enacted during the year 1908, besides the new Cheque Law, of which a full account has already been given (No. XIX., pp. 79-83), comprises statutes regulating or amending the law as to insurance

contracts, the law as to time bargains in produce and stocks, the law as to liability for damage done by animals, and the law as to the methods of dealing with dishonoured bills of exchange. A more detailed statement as to the effect of these statutes will be given in one of our next numbers.

5. ITALY.

[*Contributed by* SIGNOR T. C. GIANNINI, *of Rome.*]

During 1908 the Italian Parliament occupied itself with the completion of various projects which had previously been brought forward. Its attention was specially directed to those more urgent problems which have for some time stirred public opinion and provided thought for economists and sociologists.

Thus we find legislation for the working classes, dealing with cheap workmen's dwellings, with primary education, with municipal undertakings, with taxes and duties, with tramways, with industrial schools, with commerce and industry, etc., etc.

Act No. 76, March 8, 1908, making provision for the acquisition of land for municipal purposes and for the use of such land.

This Act annulled or suspended the preceding laws—codified in R.D. August 3, 1891, No. 50—and repealed the provisions dealing with the acquisition of land for municipal purposes, leaving in force those which merely defined the term "municipal purposes." The former laws had to be repealed, as their administration had proved unsatisfactory both to the owners and to the users of the land, and, taken in conjunction with the modern social movement and with local jealousies, had often led to disputes and even acts of open violence.

In Laturni, in particular, frequent quarrels and disturbances had arisen, owing to the acquisition of lands and to the exercise of disputed municipal rights.

This Act facilitates agreements drawn up by the Arbitration Court, whose powers do not extend to cases where the exercise of municipal rights has been determined either by a decision in Court or by a contract.

The Act is provisional, since the Government has undertaken to bring in a Bill to place municipal functions on a more permanent basis.

R.D. Act No. 150, February 6, 1908, which continues the general Ordinance concerning primary education.

Primary education in Italy had been the subject of a series of laws and regulations dating from 1859. It was found necessary to codify these into a general Ordinance, issued on February 6, 1908. This Ordinance consists of seven articles.

The first article contains the regulations concerning compulsory education in the communes, the enforcement of which is entrusted to a special committee possessing definite powers. Article 2 deals with school organisation;

Article 3 with the legal status of the masters and directors of studies; Article 4 with their salaries. Article 5 treats of the provincial education committees and their resources. No. 6 provides for a State contribution towards the expenses incurred by the communes for the salaries of masters in accordance with the Act, April 11, 1886. No. 7 contains regulations concerning private education, crêches, and special schools (for the deaf and dumb, the blind and defectives). All of these are under Government inspection.

Act No. 391, July 5, 1908, recognised the national institution founded in Rome for the education of the orphans of primary schoolmasters as an autonomous body in accordance with Art. 29 of the Act No. 409, July 8, 1904.

Legislation for the working classes has also received a remarkable extension.

Act No. 105, March 22, 1908, prohibiting night-work in the bakery and confectionery trades.

Many Congresses had voted for the prohibition of night-work, which was already restricted in most of the communes, and the abolition of it had been recommended by a Commission of the Board of Trade in 1906. The Government Bill was abandoned in favour of one which originated in Parliament, and which extended the prohibition of night-work to confectioneries as well as to bakeries. The Act contained an absolute prohibition of night-work between 9 p.m. and 4 a.m., leaving it to each town or district to make regulations as to hours to suit local conditions. This concession to local needs forms an exception of which the municipal authorities can only avail themselves within narrow limits without transgressing the principle laid down in the Act. Those concerned have a right of appeal to the Minister of Agriculture and Commerce, who alone has power to rescind the prohibition for periods longer than those for which the Communes, under exceptional circumstances (fire, festivals, immigration, etc.), are able to grant exemptions, with the consent of the permanent Labour Committee. The inspectors of trade and industry, in conjunction with the judicial and municipal police forces, and with the municipal public health officers, are entrusted with the enforcement of this law.

An Ordinance relating to the enforcement of this law was issued on June 28, 1908 (No. 432). It defined the duties of the public health officials chosen to inspect; gave power to the inspectors and agents to visit the work-places and to question the manager or foreman and the employees, and explained the method of detecting breaches of the law.

Act No. 333, July 2, 1908, deals with the increase in the number of inspectors for the administration of the labour Laws. The Act authorises an annual expenditure of 80,000 lire, to appear in the balance sheet of the Minister of Agriculture and Commerce.

In regard to workmen's insurance against accident, there has been a

tendency towards a State system. Three Departments—those of Posts and Telegraphs, Telephones, and State Railways—have led the way.

The Act No. 51, January 31, 1904, obliged the Government to insure its own employees at the National Bank for Accident Insurance, provided that the employees in question were not entitled to compensation for accident under some other special law. In R.D. July 6, 1907, No. 716, the Department of Posts and Telegraphs had instituted such compensation for those of their employees and agents who had no claim to a pension, forming a State insurance limited to the workpeople employed by the State. The Department of State Telephones extended the scope of this Decree to its own officials (R.D. November 28, 1907, No. 823). Similar provision was made for the casual employees on the State Railways in **R.D. May 21, 1908, No. 244**. This differs from the preceding decrees in that the third, and last, article reserves to the railway administration the power to insure at the National Bank such casual employees as it would not be convenient to insure directly in accordance with Article I. The Departments of the Posts and Telegraphs and of the Telephones have wider powers of insurance, since they may insure not only casual workpeople, but all employees who have no claim to pensions. In other respects the insurance systems are the same, since they are all based on the Act of January 31, 1904, on industrial accidents, and the Ordinance relating to it of March 13, 1904.

The legislative provisions relating to the housing of the working classes were put into a convenient form by the *codification of the laws on cheap workmen's dwellings*, which was approved by **R.D. February 27, 1908, No. 89**.

The first chapter of this Act is concerned with loans for workmen's dwellings, and determines what institutions may lend money to the Co-operative Societies for the building and purchase of houses and to the Benefit and Mutual Aid Societies which undertake such operations. The loans may bear an interest not to exceed $4\frac{1}{2}$ per cent., and are not to amount to more than two-thirds of the estimated value of the houses in cases where they are not guaranteed by a life insurance policy, or to more than seven-tenths of the value when they are so guaranteed.

The loans to the Co-operative Societies may be made either to the society as a whole or to the members who have acquired the ownership of the houses.

To be eligible for a loan, the Mutual Aid Societies must form a special department to deal with cheap workmen's dwellings for the benefit of their own members.

The loans must be secured by a first mortgage on the houses retained, or sold to members owning houses and to other associations for working-class dwellings.

The public departments of the State have power to keep back from the salaries of those of their employees who are purchasing or hiring houses built by the Co-operative Societies, or by the autonomous associations, a quota of the agreed price or the amount of rent.

Chapter II. defines the term "cheap workmen's dwellings," thus providing a criterion as to what houses may benefit by the Act. It also deals with the sale and letting of the houses.

Chapter III. is concerned with the decrease of the burden of taxation. The taxes on registration, on the business connected with drawing up or modifying the rules of the Societies, on inscription in the official folio, on loan contracts, on the drawing up of mortgages, and on transcriptions of all kinds, are reduced by three-fourths of the ordinary rate.

Further decreases result from exemption from the Government tax and the provincial supertaxes on loans made for the purposes of, and in accordance with, the Act.

These reductions and exemptions all cease if the houses lose their character of cheap working-class dwellings, or acquire a value above the legal maximum. The concessions in respect to payments cease likewise, and the taxes and duties rescinded can be re-imposed by the Government without further formality, either on the Society or on those to whom the houses had been assigned, as soon as the said houses are used for a purpose different from that stated in the present Act.

Chapter IV. is concerned with the sale of the houses and the annulling of contracts. The procedure to be followed in selling the houses is set forth; their sale cannot be forbidden without the consent of the society which built them, or of the Mutual Aid Society; the building society is authorised to refuse to complete its contract in case the payments are in arrears to an amount equal to half the yearly sum due.

Chapter V. deals separately with building by employers and with rural housing. The exemption from Government taxes and from the provincial and commercial surtaxes is extended to working-class dwellings built by employers and by owners or farmers of land, to be sold and paid for by instalments, or let to their own dependents, employees, workmen, or labourers.

In order to facilitate rural building and its adaptation to better sanitary conditions, the savings banks, the loan institutions, and other similar establishments are authorised to make loans to be repaid by instalments, guaranteed by mortgages on buildings and on the land occupied by them.

Chapter VI. relates to houses built by the communes, which, when there is a lack of accommodation for the poorer classes, are empowered to undertake the provision and letting out of workmen's dwellings, subject to the existing laws which regulate the undertaking of public functions by the municipalities.

Such houses must not be let to families whose total income exceeds 1,500 lire, or 300 lire for each member.

Chapter VII. extends the benefits of the Act to recognised associations and to Benefit Societies. Autonomous associations for building workmen's dwellings are empowered to issue shares of 50 and 100 lire, and the tax on the issue is reduced to one-fourth. The communes may make over

at cost price ground for building workmen's dwellings to the Co-operative and Mutual Aid Societies, to associative bodies, and to Benefit Societies.

Chapter VIII. deals with the questions of inheritance of the houses and of expropriation.

Chapter IX., and last, institutes the Central Commission at the Ministry of Agriculture, Industry, and Commerce, to examine all questions relating to the law and to report on them to the local committees formed by the Syndic of the Commune, whose business it is to encourage the formation of building societies and to make certain that their houses are built in accordance with the law.

6. SWITZERLAND.

[*Contributed by* CARL WIELAND, ESQ., LL.D., *of Basle.*]

The most important Act passed during last year is the Federal law of April 2 concerning insurance contracts. The power of the Federal Council to pass such a law is based on Art. 64 of the Federal Constitution. The first draft of the Federal law on contracts contained provisions relating to insurance contracts. These were, however, struck out owing to the difficulty of the subject.

The new Act, drafted by Professor Rölli, is an attempt to satisfy both the technical requirements of insurance and the needs of the insuring public. Hence many of its clauses are compulsory in character. The most important of the provisions are the following: The contract is, under all circumstances, cancelled, if the risk no longer exists owing to the conclusion of the employment, or if the accident insured against has actually occurred at the date of the contract (Art. 9). No clause may be inserted which provides that the demand for payment of insurance is valid only when agreed to or after judgment passed in the law courts. Heavy over-insurance or double insurance invalidates the contract (Arts. 51, 52). The amount of compensation must be determined according to the interests involved at the time of the accident. An especially important provision is that forbidding a shorter prescription (or other similar restriction) than the legal one of two years.

7. UNITED STATES OF AMERICA.

STATE LEGISLATION.

[*Contributed by* R. NEWTON CRANE, ESQ.]

The material and important changes in the statutory law of the different States were less numerous in the year 1907 than usual, notwithstanding the fact that the legislature of every State was in session for from two to five

months during the year. The sessions are biennial in all the States and Territories except Georgia, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina, where they are annual, and Alabama, where they are quadrennial. It is worthy of note that while the trend of opinion is in favour of relieving the citizens from the excitement and interruption to business incident to an annual election for representatives or delegates to the legislature, the period of four years' interval has worked an apparent inconvenience in Alabama, and by the joint resolution of both houses of that State a proposed amendment to the Constitution, limiting the sessions to intervals of two years, was submitted to the voters at the November election 1908. It is also of interest that the average time occupied in the various States in the work of law-making is a little over two months. The most expeditious legislators were those of the States of Oregon, South Carolina, and Wyoming, in each of which the work was dispatched in forty days. As the sessions of Oregon and Wyoming are biennial, the entire time devoted by the representatives of the people to framing laws averaged twenty days per annum. In these forty days the Oregon legislature passed 294 laws and resolutions, the South Carolina legislature 230, and the Wyoming legislature 109. The longest time spent in legislation was in the States of Connecticut, 205 days; New York, 195 days; Wisconsin, 189 days; Michigan, 179 days; and Massachusetts, 178 days. In California an amendment to the State Constitution is to be submitted to the people providing that no bill be introduced in the legislature after forty days of session, except with the consent of three-quarters of the members.

Governors' Messages.—It is the custom in each State for the governor to address a message to the legislature at the opening of the session, submitting definite recommendations concerning legislation. These recommendations are frequently followed, but even where they are not, they afford apt illustrations of the sentiment of the respective communities with regard to desired new laws or to amendments of existing statutes. In the following notes of the Acts passed, reference will therefore be made to the governors' messages.

Uniform Laws.—Illinois has created a commission for the promotion of uniformity of legislation throughout the United States, consisting of five members appointed by the governor for four years, whose duty is to make a biennial report to the governor thirty days before the convening of the legislature. Utah has passed a similar law. In Kansas an Act has been passed directing the governor to call an interstate conference, to which the governors of Colorado, Nebraska, Iowa, Missouri, Illinois, Arkansas, Texas, and Oklahama are to be invited to discuss uniform legislation with respect to oil. The governors of Connecticut, Massachusetts, Rhode Island, South Dakota, and Utah all urge concerted measures among the States to procure uniformity in the laws relating to sales, warehouse receipts, marriage and divorce, "trusts," and taxation.

Comparative Legislation.—Alabama has passed an Act creating a department of Archives and History to encourage the establishment of public and school libraries, to give advice in library administration, to conduct travelling libraries, and to arrange reference collections for the use of members of the legislature and State officials. Similar Acts have been passed in Indiana, Michigan, Nebraska, and North Dakota.

Amendments to the State Constitution.—The written constitutions of the various States prevent the enforcement of any laws enacted by the legislature which are not strictly within their provisions. For example, the Supreme Court of Colorado declared to be unconstitutional an Act which authorised a Humane Society to take charge of abandoned or cruelly treated animals, on the ground that its effect was to take property without due process of law. The Florida legislature provided a procedure for the prosecution of a person carrying concealed weapons. This the Court held to be unconstitutional because it did not provide for the prosecutor's fee in cases where the defendant was acquitted. The Act of the Illinois legislature making the commission of a lewd or lascivious act with a child a felony was held to be unconstitutional because the title of the bill was defective. The Massachusetts statute providing for voting machines was declared to be unconstitutional on the ground that it violated the provision of the constitution which required "written votes." The Mississippi statute partially abrogating the doctrine of fellow servants as to the employees of a limited liability company was held to be unconstitutional because it denied to such companies the protection of the laws equally with individuals. The New York law prohibiting the employment of females and minors between 9 p.m. and 6 a.m. was declared to be unconstitutional on the grounds, *inter alia*, that it discriminated against female citizens and infringed the right of contract. The Ohio Act providing for a pension for the indigent blind was held to be a violation of the constitutional provision against the use of public funds for private purposes. The Texas statute requiring railway companies to maintain water-closets at all stations was held to be unconstitutional because it deprived the owner of his property without due process of law. In all, no less than ninety-eight laws passed by the various legislatures in the sessions previous to those under review were declared for various reasons, mostly of a highly technical nature, to be unconstitutional. The only method, therefore, by which needful legislation may be effected is by amending the constitution, and nearly one hundred such amendments were accordingly submitted to the people for their approval by the legislatures which met in 1907.

Corrupt Practices Act.—Indiana has passed an Act prohibiting policemen and firemen from engaging in politics. Rhode Island has made the offence of bribery or intimidating voters punishable by a fine of from $500 to $1,000 and six months' to two years' imprisonment. California, Iowa, New York, and South Dakota have enacted laws requiring itemised statements of expenditures to be filed by candidates and political committees, showing the

purposes for which the money was used. Seventeen of the States have enacted laws prohibiting limited liability companies, particularly insurance corporations, from making contributions for political purposes out of their corporate funds.

Popular Election of U.S. Senators.—At present the members of the Senate, the second chamber of the Federal legislature, are elected by a joint ballot of the respective State legislatures. For some years there has been an apparent desire throughout the country, and particularly in the Western States, to have the senators elected by a direct vote of the people. This change could only be effected by amending the constitution of the United States, an operation which would take several years to accomplish and might meet with failure. As a temporary expedient to procure the desired action laws have been passed in a number of States which provide that at the primary elections for the nomination of members of the State legislature every voter may indicate his choice for senator. This would be a direct mandate from the people, and although the members of the legislatures could not be compelled by law to obey the mandate, its disobedience would involve such personal political consequences that it could hardly be disregarded. The governors of Alabama, Colorado, Indiana, and Iowa recommend the passage of resolutions requesting Congress to propose an amendment to the constitution of the United States to secure the desired change, and the governors of Michigan and New Jersey advise the adoption of the primary voting system as a temporary expedient to the same end. Such a system is already in practice in some States, *e.g.* New York and Oregon, and laws to secure it were passed in Iowa, Nebraska, New Jersey, and Washington.

Voting Machines which automatically mark and register the ballot are in use in many States, and legislation with respect to their use was enacted in California, Massachusetts, Michigan, Montana, New Jersey, New York, Utah, and Wisconsin.

Polygamy.—Delaware, North Carolina, Pennsylvania, and West Virginia have passed joint resolutions requesting Congress to call a convention to amend the United States constitution so as to prohibit polygamy.

Convict Labour.—An Act has been passed in Alabama to provide that the net proceeds from the labour of convicts may be applied to the construction and maintenance of roads; in Colorado, that the inmates of the penitentiary, reformatory, and industrial schools for boys may make wearing apparel for the inmates of the Home for Dependent Children, the Insane Asylum, and the Soldiers' Home; in Colorado, that convicts may be taught a trade and have compensation in lieu of "good time"; in Maine and Missouri, that if the earnings of a prisoner exceed the expense of his commitment and maintenance, the balance shall be paid to his dependent kindred; in Michigan, that convicts may receive payment for overtime.

Descent and Distribution of Property.—Delaware has passed a law under

which the property of an intestate illegitimate descends to the mother and her heirs. In Indiana a surviving husband or wife, provided for in a will, may elect between the devise and the inheritance by descent as in intestacy. Iowa has abolished the rule in *Shelley's* case, and in Michigan it is provided that a child born after the making of a father's or a mother's will shall take as if the parent died intestate.

Marriage.—In Utah an Act has been passed making a marriage between first cousins or within the fifth degree of consanguinity incestuous, and rendering void a marriage with a person affected with syphilis, gonorrhea, or chronic epilepsy. Wisconsin inhibits the marriage with a person who is insane, feeble-minded, or epileptic, and makes it a misdemeanour to solemnise or aid such a marriage. In California and West Virginia a marriage of a male under twenty-one or a female under eighteen must have the written consent of parents. In Wyoming a marriage licence may not be issued to parties incompetent to marry in the State where they reside.

Divorce.—The legislature of South Dakota has changed the law which heretofore permitted divorce to a person or persons who had resided within that State for six months, and has extended the period of residence to twelve months. In Maine divorce may now be granted where one of the spouses has been confined in an asylum for fifteen years and is incurable. In Iowa it is made a misdemeanour for divorced persons to marry within one year. In Massachusetts and Michigan the Court may appoint an attorney to represent the State in divorce proceedings.

Support of Family.—The number of States in which it is made a misdemeanour or felony for a husband to desert, abandon, or neglect to support his children or his wife has been largely increased. In California a child is to be considered abandoned when the father furnishes insufficient food and clothing. In Indiana such abandonment has been made a felony, with a penalty of from one to three years' imprisonment and disfranchisement for three years.

Foreign Corporations.—In Alabama the licence of a foreign limited liability company to do business within the State may be cancelled if in case of litigation such company removes the action into a Federal Court, and, if so cancelled, the licence will be restored only upon payment to the State of a sum equivalent to one-tenth of its capital stock. In Indiana the application of a foreign corporation for licence to do business within the State must be accompanied by an undertaking not to remove to or bring an action in the Federal Courts against a citizen of the State.

Prohibition of Intoxicants.—As the Courts have declared the various laws authorising the seizure of intoxicating liquors while in transit by State authorities to be unconstitutional, in so far as it applies to interstate traffic, several of the States where prohibition laws are in force have passed resolutions requesting Congress to enact laws to prevent the interstate shipment of liquors into prohibition territory. In Georgia additional

legislation has been passed for further prohibiting the manufacture as well as the sale of intoxicants within that State. In Arkansas and Connecticut it has been made unlawful to solicit orders for intoxicating liquor in a prohibition district, and in Texas to store or warehouse it in such districts. In Indiana selling liquor in a restaurant car is subject to a licence of $1,000 and in New Mexico of $200. In Nebraska it is a misdemeanour for a manufacturer of liquors to be a retailer thereof or to assist the retailer or to own leasehold premises for the retailing of liquors.

Tobacco and Cigarettes.—Minnesota, Wisconsin, Florida, Illinois, and South Dakota prohibit the sale of cigarettes to or for the use of a minor. Wisconsin prohibits the use of tobacco by a person under sixteen. Arkansas makes the sale or gift to any one of cigarettes or cigarette papers a misdemeanour. Washington prohibits the manufacture as well as the sale of cigarettes.

Railways, Passengers, and Freights.—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, and many other States have passed laws to prohibit railway companies from charging more than a given maximum fare, generally speaking two cents per mile. A number of States prohibit the issue by railway companies of free passes and franks for the transportation of passengers, particularly State legislators. Florida requires separate waiting-rooms and ticket-windows for white and coloured passengers, and separate accommodation in urban and suburban electric tramways. Texas does likewise. Indiana requires the railways to carry 150 lb. of luggage, including commercial travellers' samples, free, and Massachusetts provides that no storage fee shall be charged for luggage left at a station from Friday to Monday. Nearly twenty States have provided the maximum number of hours during which railway employees may be engaged in continuous work, the time, generally, being sixteen hours, after which there must be an interval of from eight to ten hours for rest.

THE UNITED STATES TARIFF.

Mr. Wallwyn P. B. Shepheard has prepared the following analysis of and observations on the Tariff Law (1909) of the United States of America.

Act of Congress approved August 5, 1909.

Analysis.

The preamble of the Act states that it is—

(*a*) To provide revenue,

(*b*) To encourage the industries of the United States, and

(*c*) To effect other purposes.

The new tariff operates, as regards the minimum tariff, which is

defined to be the dutiable list and the free list, from the day after August 5, 1909, when the Bill became law.

The Minimum Tariff.—S. 1 of the Act contains the dutiable list which enumerates articles 1 to 481, and the free list enumerating articles from 482 to 718; and the section concludes by stating that the dutiable and free lists constitute the minimum tariff and this is operative in respect of imports from all foreign countries alike into the United States.

The Maximum Tariff.—S. 2 contains the maximum tariff, which is the minimum tariff as regards the Dutiable List increased by 25 per cent. *ad valorem*. This comes into operation on March 31, 1910. After the maximum tariff comes into operation it is subject to a proviso enabling the President to issue a Proclamation restoring the minimum tariff as against such foreign countries as—

(*a*) Impose no terms or restrictions which in anywise, as therein specifically stated, unduly discriminate against the United States or the products thereof,

(*b*) And pay no export bounties or impose no export duties or prohibition on exports to the United States,

(*c*) And accord to the products of the United States treatment which is reciprocal and equivalent.

Each Colony with Tariff Powers recognised as a Unit Independent of Other Political Divisions of the Same Power.—The Proclamation of the President restoring the minimum tariff may extend to the whole of any foreign country, or be confined to, or exclude from its effect, any dependency, colony, or other political sub-division having authority to impose tariffs, or make concessions, upon the exportation or importation of articles which are or may be imported into the United States.

Cuban Treaty.—S. 3 saves from the operation of the Act the provisions of the treaty with Cuba of December 11, 1902.[1]

Abrogation of Existing Commercial Agreements.—S. 4 requires the President to abrogate and revoke by notice as therein stated all commercial agreements with foreign countries made pursuant to s. 3 of the Tariff Act, 1897.

Philippine Islands.—S. 5 contains special provisions as to the Philippine Islands.

Export Bounties and Countervailing Duties.—S. 6 imposes, in addition to the duties under the Act, an import duty equivalent to any export bounty paid by any foreign country.

Compulsory Merchandise Marks as to Countries of Origin.—Ss. 7 and 8

[1] This treaty of December 11, 1902, was carried into effect by the Act of Congress, December 17, 1903. It was provided by the treaty that during its continuance reductions off the then tariff in favour of sugar from Cuba might be made up to 20 per cent., and that no sugar from any other foreign country should, while that treaty was in force, be admitted by treaty into the United States at a lower rate of duty than that provided by the United States Tariff Act of 1897.

require that all articles of foreign manufacture and their packages shall bear marks in legible English of the country of origin, and subjects persons violating this requirement to fines and imprisonment.

Obscene Literature, etc.—Ss. 9, 10, and 11 prohibit imports of all kinds of obscene, etc., literature; articles and drugs available for immoral purposes; and lottery tickets, and provides the criminal process for enforcing the law.

Cattle and Hides.—Ss. 12 and 13 deal with the importation of neat cattle and hides.

Prohibition of Products of Convict Labour.—S. 14 prohibits the importation of all products of convict labour.

Tonnage Duties.—S. 15 imposes a discriminating tonnage duty of 10 per cent. *ad valorem*, in addition to the tariff duties, on cargoes not shipped in vessels of the United States, subject, however, to the qualifications specified in the section as regards existing treaties and conventions, and as to retail products from countries contiguous to the United States.

Prohibition to reciprocate like Prohibition (if any) by Foreign Countries against Vessels of United States.—Ss. 16 and 17 prohibit in the case of non-treaty countries all imports shipped in vessels other than those of the United States, or of the country of origin of the goods imported; but excepts from the section all countries which do not maintain a similar regulation against vessels of the United States.

Machinery Repairs, etc. Purchase from Bond by Vessels of War.—Ss. 18 to 22 inclusive refer to machinery for repair, articles for shipbuilding and repairs, purchase of supplies from bond for vessels of war of countries which reciprocate such privilege towards vessels of war of the United States, and cargoes of vessels sunk within the jurisdiction of the United States and abandoned by the owners.

Bonded Warehouses and Manufactories, and Drawbacks.—Ss. 23, 24, 25, and 26 relate to bonded warehouses and factories and drawbacks of duties on exportation.

Forest Products.—S. 27 relates to the products of forests of the State of Maine on the St. John and St. Croix rivers owned by American citizens.

Administrative Act.—S. 28 contains the Administrative Act with twenty-eight sections in respect of consignments to merchants in the United States, bills of lading, invoices, declarations to be made by importers, consignees, owners of invoiced goods, appraisements of merchandise, market values, and general customs procedure.

Establishment of United States Court of Customs Appeal.—S. 29 creates a United States Court of Customs Appeal with exclusive jurisdiction in all appeals from any Board of United States General Appraisers, with a proviso saving as therein specified the jurisdiction of the Supreme Court in Customs cases.

Appointment of Assistant and Deputy-Assistant Attorney-Generals.—

S. 30 relates to the appointment of an Assistant Attorney-General and Deputy-Assistant Attorney-General to represent the interest of the Government in tariff matters as therein specified.

Tariff to be applied to Goods in Bond at Date of passing the Act.—S. 29 subjects to the tariff all goods in bond at the date of the Act and for which no delivery permits had been issued to the importers.

Tobacco Regulations.—Ss. 30 to 35 inclusive contain special regulations as to tobacco.

Tonnage Tax.—Ss. 36 and 37 relate to tonnage tax on vessels from any foreign ports in North America, the West Indies, and Newfoundland, and to foreign yachts.

Corporation Tax.—S. 38 relates to the corporation tax.

Borrowing Powers.—Ss. 39 and 40 authorise borrowing by the Secretary of the Treasury for expenditure on Panama Canal, and to meet any war expenditure.

Repeal of Previous Acts.—S. 41 contains the repeal of ss. 1 to 4 inclusive of the Tariff Act, 1897, and all Acts inconsistent with the new Tariff Act.[1]

Date of Act.—S. 42 enacts that the Tariff Act shall take effect on the day following its passage—viz. August 5, 1909.

Observations.

The foregoing is an analysis and abstract of the Tariff Law, from which the following points may be concluded:

1. That the Tariff Law, 1909, differs from the Law of 1897 (Dingley Act) and the Law of 1890 (McKinley Act), in that no power to make any reciprocity treaties is given to the President of the United States.

2. That the minimum tariff is fixed in amount against all foreign countries alike in respect of articles on the dutiable list. This avoids international questions on the application of the most-favoured-nation treatment, but not questions as to reciprocal national treatment claimable (if so it be) under our existing Treaty of Commerce of 1815.

3. That the minimum tariff measures the amount of irreducible difference between national or domestic treatment and international or foreign treatment.

4. That the reciprocal and equivalent treatment required by s. 2 on the part of foreign countries would be a treatment which corresponded with that on the part of the United States—viz. a preference in favour of national industries to the full amount of a minimum tariff.

5. That the existence of preferential arrangements between Great Britain and her Colonies and between the several British Colonies is not

[1] S. 4 of the Tariff Act, 1897, repealed as above, was the section enabling the President to make reciprocity treaties.

an avoidance of the reciprocal and equivalent treatment required by the United States under penalty of the maximum tariff. But as regards the free list the question may arise as to what is to be deemed reciprocal and equivalent treatment.

6. That the Tariff Act enables each of the British Colonies having tariff powers to qualify for the minimum tariff by themselves—severally and independently of each of the others.

7. That the Tariff Act contains the fullest details for the information of all shipping and merchant firms as to the specific and *ad valorem* duties, and the trading and shipping legal procedure. Any legal questions will be matters of private law and determinable in the usual course by the United States tribunals.

8. That the Tariff Act does not diminish the difficulty of determining the incidence of differential import duties when the national and domestic competing products are free of duty.

9. That the internal revenue laws of the United States may or may not have an effect which should be considered in relation to the Tariff Act.

This analysis and these observations will indicate the important point that the Tariff Act of the United States will create no difficulty in British preferential arrangements so long as the preference is limited inter-imperially. But it must not be forgotten that under the Brussels Convention of 1902 no preference is to be granted in the United Kingdom to Colonial sugar as against sugar from the Contracting States.

BRITISH EMPIRE.

I. UNITED KINGDOM.

[*Contributed by* W. H. Aggs, Esq., M.A., LL.M., *Barrister-at-Law.*]

Acts passed—Public General, 69; Local and Private, 168.

Out of some four hundred and twelve Bills introduced into the House of Commons, or brought down to it from the House of Lords, sixty-nine passed into law as Public General Acts, being an increase of thirteen upon the preceding year.

The application of the Acts pased was as follows: [1]

38	. . .	applied to the United Kingdom.
6	. . .	„ „ England alone.
6	. . .	„ „ Scotland alone.
13	. . .	„ „ Ireland alone.
1	. . .	„ „ England and Scotland.
1	. . .	„ „ England and Ireland.
1	. . .	„ „ Isle of Man.
1	. . .	„ „ London.
1	. . .	„ „ Durham.

The special feature of the legislation of 1908 was the amount of useful work that was accomplished in the way of consolidation. Further progress was also made in statute law revision by the *Statute Law Revision Act*, 1908 (c. 49, U.K.), which dealt with some 594 Acts of Parliament, though at the same time the *Expiring Laws Continuance Act*, 1908 (c. 18, U.K.), maintained the system whereby many Acts of far-reaching importance and also of practically a permanent character are annually renewed.

Agriculture.—(i) *The Seed Potatoes and Seed Oats Supply (Ireland) Act*, 1908 (c. 18, I.), legalises loans (s. 1) and supplies (s. 2) made by guardians with the approval of the Local Government Board of seed potatoes and seed oats, and the supply is deemed to be a legal sale and the value can be

[1] The letters U.K., E., S, I., Col., and B.E., indicate the extent to which the various Acts are applicable, and an * means that the Bill was introduced by a private member.

recovered from the person so supplied by two instalments levied after the manner of a rate. No electoral disability (s. 3) is to attach to any voter.

(ii) *The Bee Pest Prevention (Ireland) Act*, 1908 (c. 34, I.), requires persons to notify (s. 1) the existence of bee pest or foul brood amongst their bees and empowers (s. 2) any officer of the Department of Agriculture to inspect bees and order the destruction (s. 3) of infected bees and appliances, but the owner is to receive compensation (s. 6) in respect of such destruction. There is a power of summary prosecution of offences under the Act.

Allotments and Small Holdings (c. 36, E.).—The amending Act of 1907 (see Journal, No. XX. p. 380) caused a great increase in the numbers of small holdings and allotments throughout England and Wales, and the *Small Holdings and Allotments Act*, 1908, is merely a consolidation of the existing statute law upon the subject—a consolidation brought about by the whole or partial repeal of six earlier statutes, though the Acts prior to 1887 have not been interfered with.

Army and Navy.—*The Army (Annual) Act* (c. 2, B.E.) passed very much in its usual form and provided for a home force of 185,000 men, but otherwise calls for no comment. *The Naval Lands (Volunteers) Act*, 1908 (c. 25, U.K.), gives (s. 1) to the Royal Naval Volunteer Reserves the same rights as a volunteer corps have in the Military Lands Acts, 1892 to 1903.

Assizes and Quarter Sessions (c. 41, E.).—The object of the *Assizes and Quarter Sessions Act*, 1908, is to prevent the waste of time that often occurs in connection with the holding of assizes and quarter sessions, and provision (s. 1) is made for notifying jurors that they need not attend if there will be no business to be transacted. Also to ensure the earlier trial of prisoners latitude is given (s. 1 [3]) as to the assizes or quarter sessions to which they are committed. An extension of time during which quarter sessions can be held is also provided for (s. 3).

Birds (c. 11, U.K.).—*The Wild Birds Protection Act*, 1908, makes it an offence to take any wild bird by means of a hook or other similar instrument, a very cruel practice which, it is believed, has its origin in China.

Commons.—(i) *The Commons Act*, 1908 (c. 44, E.), enables regulations to be made with regard to the turning out of entire animals upon commons, a matter of considerable importance if the standard of stock breeding is to be maintained.

(ii) *The Crofters' Common Grazings Regulation Act*, 1908 (c. 50, S.), is to be read as part of the Crofters' Holdings (Scotland) Act, 1886, and extends the powers of the Crofters Commission in regard to the regulation of common grazings.

Companies.—The important amendments in the law affecting limited liability companies brought about by the Act of 1907 (see Journal, No. XX. p. 364) needed that consolidation should be taken in hand, and

this has been accomplished by the *Companies (Consolidation) Act*, 1908 (c. 69, U.K.), which repeals wholly or in part twenty-eight Acts. The Act of 296 sections and six schedules is divided into ten Parts as follows :

Part I. : Constitution and Incorporation.

Part II. : Distribution and Reduction of Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.

Part III. : Management and Administration.

Part IV. : Winding-up.

Part V. : Registration Office and fees.

Part VI. : Application of Act to companies formed and registered under former Companies Acts.

Part VII. : Companies authorised to register under this Act.

Part VIII. : Winding up of Unregistered Companies.

Part IX. : Companies established outside the United Kingdom.

Part X. : Supplemental.

Coroners.—*The Coroners (Ireland) Act*, 1908 (c. 37, I.), effects an amendment by providing for the appointment of deputy coroners in counties and boroughs in Ireland.

Criminal Law.—Several Acts of considerable importance were passed in this branch of the law.

(i) In the first place the *Prosecution of Offences Act*, 1908 (c. 3, E.), separates once more the office of Director of Public Prosecutions from that of the Treasury Solicitor, and (ii) the *Costs in Criminal Cases Act*, 1908 (c. 15, E.), effects a long-needed consolidation and amendment of the law respecting criminal costs. By the common law of England there was no power to grant costs, either out of public funds or as between the parties, to either the prosecutor or the accused in any criminal proceeding. This disability has gradually been removed by statutes dating from 1752, and the Acts mentioned in the schedule of repeals, thirty-five in all, to this Act practically contain the whole history of the matter, and from first indemnifying the prosecutor out of public funds it was subsequently made permissible to give a similar indemnity to the accused and the witnesses for the defence. By the present Act a complete discretion in respect of costs is for most purpose vested in the Court before which the trial takes place.

(iii) *The Punishment of Incest Act*, 1908 (c. 45 E. & I.), makes carnal knowledge within certain specified relationships a misdemeanour, and the relationships need not be traced through lawful wedlock (s. 3). The female also, if above sixteen and a consenting party, and knowing of the relationship, is equally guilty of a misdemeanour (s. 2). And the Court is under an obligation to conduct all the proceedings under the Act *in camerâ*.

(iv) *The Criminal Appeal Amendment Act*, 1908 (c. 46, E.), enables *all* the judges of the King's Bench Division to sit in the Court of Criminal Appeal (s. 1), and the Master of the Crown Office is made the Registrar of the Court and there is power to provide additional staff (s. 2).

(v) *The Prevention of Crime Act*, 1908 (c. 59, U.K.), introduces new methods into the treatment of the criminal classes. Part I. deals with the reformation of young offenders and provides for the establishment of what are known as Borstal Institutions (s. 4). These institutions are not devised for first offenders but rather for young recidivists, who are apparently drifting towards a career of crime. Power is also given to release on licence (s. 5) persons whom, it is hoped, have become reformed and to have a supervision (s. 6) over them during the period of such licence.

Part II. deals with the detention of habitual criminals and inaugurates a new system whereby a person may be sentenced to a term of preventive detention in addition to penal servitude and thereby rendered unable to prey upon society for a considerable period of time. The length of such preventive detention cannot be more than ten or less than five years. A Secretary of State may discharge the prisoner during the period of preventive detention if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life, or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him from confinement.

Education.—(i) *The University of Durham Act*, 1908 (c. 20), creates a body of commissioners (s. 1) styled the University of Durham Commissioners with the Duke of Northumberland as the chairman. The Commissioners are to make (s. 3) statutes regulating the constitution of the University of Durham and the powers and duties of its various authorities and constituent bodies and the disposition of its existing property in general accordance with the scheme scheduled to the Act. The statutes have to be laid (s. 4) before Parliament and are not valid until approved by his Majesty the King in Council.

(ii) *The Irish Universities Act*, 1908 (c. 38, I.), provides for the founding of two new universities in Ireland having their seats at Dublin and Belfast respectively.

Ss. 1-6 deal with the foundation of the two new universities and contain provisions as to Queen's Colleges and create (s. 6) two bodies of commissioners, styled respectively the Dublin Commissioners and the Belfast Commissioners, who are to make statutes (s. 4) regulating the general government of the two Universities respectively, and Schedule II. contains provisions applicable to the Commissioners.

Ss. 7-10 contain financial provisions and also deal with the purchase of land.

Ss. 11-19 contain provisions as to transfer, etc.

(iii) *The Endowed Schools* (*Masters*) *Act*, 1908 (c. 39, U.K.), renders the position of masters more secure by entitling them, except in cases of misconduct, to in general two months' notice of dismissal, expiring with a school term.

(iv) *The Education* (*Scotland*) *Act*, 1908 (c. 63, S.), effects many useful

and important amendments with regard to education in Scotland, and the general powers of school boards are considerably added to (s. 3). Provision is made (s. 4) for the medical inspection of children, with full powers of dealing (s. 6) with children in a filthy or verminous state, or who are otherwise neglected. Parents of physically or mentally defective children are required (s. 5) in certain cases to provide efficient education for them up to the age of sixteen years. Exemption certificates from school attendance can be obtained (s. 9) in certain cases, and provision is made (s. 10) for attendance at continuation classes. Superannuation for teachers is also dealt with (ss. 13, 14), as are also (s. 21) the conditions of dismissal of teachers. The other sections of the Act are mainly concerned with financial matters.

Executors.—*The Fatal Accidents (Damages) Act*, 1908 (c. 7, U.K.), is intended to do away with the anomaly which was caused by the decision in *Grand Trunk Railway of Canada* v. *Jennings*, (1888) 13 App. Cas. 800, 58 L.J. C.P. 1., and to make as far as the receipt of insurance moneys is concerned the measure of damages the same in the case of fatal accidents as of non-fatal accidents.

Factories.—An International Conference took place at Berne in 1906 when a Convention was signed by the representatives of Germany, Denmark, France, Italy, Luxemburg, the Netherlands and Switzerland agreeing to prohibit in their countries both the manufacture and sale of matches containing white phosphorus. Great Britain, however, did not sign the Convention; but the *White Phosphorus Matches Prohibition Act*, 1908 (c. 42, U.K.), brings the law of this country into conformity with that of the other European countries already named.

Finance.—(i) The *Consolidated Fund (No. 1) Act*, 1908 (c. 1, U.K.), provides (s. 1) for the issue of £375,817 out of the Consolidated Fund for making good the supply up to March 31, 1908, and £44,355,400 for supply for the year ending March 31, 1909 (s. 2), and power is given (s. 3) to borrow up to the total of these two sums by means of the issue of Treasury Bills.

(ii) *The Isle of Man Customs Act*, 1908 (c. 9), continues (s. 1) for a year certain additional duties on tea, tobacco, spirits, ale, and beer imported into the Isle of Man, and reduces (s. 2) the duty on sugar.

(iii) *The Finance Act*, 1908 (c. 16, U.K.), is the annual Budget which makes provision for the financial arrangements of the year. It is divided into six parts as follows:

Part I.: Customs and Excise. S. 1 continues the duty on tea at 5*d.* per pound. S. 2 reduces the sugar duty, and s. 3 puts a duty on Irish-grown tobacco, while s. 4 gives power to transfer the management of excise duties from Inland Revenue to Customs.

Part II.: Stamps. The *ad valorem* duty on a policy of sea insurance is reduced (s. 5) from 3*d.* to 1*d.* per £100 insured.

Part III.: Local Taxation Licences. The collection of duties on certain local taxation licences is transferred (s. 6) to county councils.

Part IV.: Taxes. Income tax is continued (s. 7) at the rate of 1*s.* and the remuneration of assessors provided for (s. 8).

Part V.: National Debt. From the surplus which usually goes into the sinking fund £600,000 is taken for the erection of buildings and public offices.

Part VI.: General. The Schedules give the various customs and excise duties and drawbacks.

(iv) *The Public Works Loans Act*, 1908 (c. 23, U.K.), authorises the issue of £3,700,000 for loans for public works.

S. 2 provides that certain debts shall not be reckoned as assets of local loans fund, and ss. 3-5 remit certain claims, while s. 6 adds to the purposes for which Public Works Loan Commissioners may lend.

(v) *The Appropriation Act*, 1908 (c. 30, U.K.), authorises (s. 1) in addition to the amounts named in the Consolidated Fund (No. 1) Act, 1908 (see above), the issue out of the Consolidated Fund of £69,157,274, and power is given (s. 2) to borrow up to this amount by issuing Treasury Bills. The remaining sections of the Act deal with the appropriation of grants, which are further specified in the schedules to the Act.

(vi) *The East India Loans Act*, 1908 (c. 54), gives power (s. 3) to the Secretary of State in Council of India to raise £20,000,000 for constructing, extending, and equipping railways in India, or irrigation works or other purposes, and to raise (s. 4) £5,000,000 for the general purposes of the Government of India.

Fish (Sea).—*The Whale Fisheries (Ireland) Act*, 1908 (c. 31, I.), prohibits (s. 1) any person engaging in the whaling industry without a licence.

S. 2 gives the conditions upon which licences are granted by the fishery authorities. Certain definite offences are (s. 3) enumerated which render the offender liable (s. 6) to a penalty not exceeding £100, and there is also power to make (s. 7) by-laws, as well as to inspect (s. 4) whaling factories and vessels employed by licence holders.

Infants and Children.—*The Children Act*, 1908 (c. 67, U.K.), familiarly termed the "Children's Charter," in ninety-four of 133 sections effects a consolidation of 312 sections which are contained in thirty-eight Acts of Parliament (see Enactments repealed in Schedule III.). The Act is divided into six parts as follows:

Part I.. Infant Life Protection.

Part II.: Prevention of Cruelty to Children and Young Persons.

Part III.: Juvenile Smoking.

Part IV.: Reformatory and Industrial Schools.

Part V.: Juvenile Offenders.

Part VI: Miscellaneous and General.

The scheme of the Act is to differentiate between a "child" and "young

person." The former it defines (s. 131) as meaning a person under the age of fourteen years, and the latter as meaning a person who is fourteen years of age or upwards, and under the age of sixteen years. The more novel and interesting portions of the Act are the provisions (Part III.) by which it is hoped to check the physical deterioration caused by juvenile smoking, the methods (Part V.) of dealing with juvenile offenders particularly in the matter of the establishment of juvenile courts (s. 111), and the abolition of the death sentence (s. 103) in the case of children and young persons, and lastly penalising (s. 119) the giving of intoxicating liquors to children and the exclusion (s. 120) of children from the bars of licensed premises. S. 107 gives in a categorical way the various methods of dealing with children and young persons charged with offences.

Judicature.—*The Appellate Jurisdiction Act*, 1908 (c. 51, U.K.), enables a colonial judge to be appointed to sit as assessor to the Privy Council. The Colonies within the provision are India, Canada, Australia, New Zealand, Cape of Good Hope, Natal, Transvaal, Orange River Colony, and Newfoundland. Various other amendments are also made affecting Privy Council appeals.

Justices.—(i) *The Summary Jurisdiction* (*Ireland*) *Act*, 1908 (c. 24, I.), very largely amends the law relating to drunkenness in Ireland. Married persons can receive protection from the husband (s. 1) or the wife (s. 2) as the case may be if he or she is an habitual drunkard. Seizure or pawning (s. 4) of the goods of an habitual drunkard is an offence in certain cases, and there is a penalty placed upon persons found drunk (s. 9) when in charge of children, or upon any one who aids or abets (s. 10) a drunken person as far as the procuring or consuming of intoxicating liquor is concerned.

(ii) *The Summary Jurisdiction* (*Scotland*) *Act*, 1908 (c. 65, S.), regulates and amends the law relating to summary jurisdiction and criminal procedure in Scotland and is largely a consolidating measure in that it repeals (see Schedule A) wholly or in part fifteen earlier Acts.

S. 2 gives definitions of the various terms used, and in ss. 4-13 is set out the jurisdiction and powers of all courts of summary criminal jurisdiction.

Ss. 14-28 contain the procedure prior to trial, and ss. 29-42 the procedure at the trial.

Ss. 43-59 deal with conviction and sentence, while under the heading of "Review" ss. 60-76 detail the mode of appealing and how an appeal is dealt with, and s. 77 effects an amendment in the Criminal Procedure (Scotland) Act, 1887, certain sections of which Act are by Schedule B applied to summary procedure. Schedules C D E and F give various forms, and in Schedule G there is a Table of Fees, and Schedule H gives the forms to be used in appeals.

Landlord and Tenant.—(i) *The Evicted Tenants* (*Ireland*) *Act*, 1908, (c. 22, I.), effects a minor amendment in the Evicted Tenants (Ireland) Act, 1907, and is retrospective in its operation.

(ii) *The Agricultural Holdings Act*, 1908 (c. 28, E.), is a consolidation of the Acts, six in number, which gave an agricultural tenant compensation on quitting his farm and the new provisions of the Act of 1906 (see Journal No. XVIII. p. 285).

The improvements in respect of which agricultural compensation can be claimed are contained in Schedule I., which is divided in three parts as follows:

Part I.: Improvements to which consent of landlord is required.

Part II.: Improvement (viz. drainage) in respect of which notice to landlord is required.

Part III.: Improvements in respect of which consent of or notice to landlord is not required.

The special improvements applicable to market gardens are contained in Schedule III.

(iii) *The Law of Distress Amendment Act*, 1908 (c. 53, E. & I.), while preserving to the landlord the right of taking in pledge the goods of his actual and immediate tenant, prevents him from unduly pressing upon lodgers, under-tenants, and those who have no beneficial interest in the tenancy, if the goods of such persons are upon the demised premises at the time the distress is made. The Act was passed owing to the manifest hardship occasioned by the decision in *Challoner* v. *Robinson*, [1908] 1 Ch. 49, 77 L.J. Ch. 72.

(iv) *The Agricultural Holdings (Scotland) Act*, 1908 (c. 64, S.), is a consolidating Act almost identical in its provisions with the English Act (see above [ii]).

Local Government.—(i) *The Polling Districts (County Councils) Act*, 1908 (c. 13, E.), gives to county councils full powers of dividing electoral divisions into polling districts.

(ii) *The Grand Jury (Ireland) Act*, 1836, *Amendment Act*, 1908 (c. 29, I.), as its title indicates effects an amendment of s. 67 of the first-named Act as adapted by the Local Government (Adaptation of Irish Enactments) Order, 1899, by increasing the amount a county council can resolve to levy for work undertaken under that section from £300 to £1,500. There is also a saving for the rights of Crown and Government Departments (s. 3), and for rights acquired (s. 4) by charter.

(iii) *The Local Authorities (Admission of the Press to Meetings) Act*, 1908 (c. 43, E. & S.), provides that representatives of the press shall be admitted to the meetings of every local authority, though there is a power of temporary exclusion. The necessity for this Act was occasioned by the decision in *Tenby Corporation* v. *Mason*, [1908] 1 Ch. 457.

(iv) *The Local Government (Scotland) Act*, 1908 (c. 62, S.), amends the law relating to county government in Scotland, and to roads and bridges and the use of locomotives thereon. Power is given (s. 3) to provide county buildings as well as additional borrowing powers (s. 4) and powers of acquiring (s. 5) land.

Ss. 6 and 7 deal with valuation. Fire-engines (s. 8) may be provided and roads and bridges widened (s. 19) and improved. Piers and ferries can be regulated (s. 11) and hackney carriages licensed (s. 13) and private hospitals transferred (s. 15) to the local authority. Regulations are made (s. 25) as to the use of locomotives on highways, and an amendment (s. 24) as to the proceedings for recovering the expenses occasioned by extraordinary traffic. Power is given (s. 26) to a county council to use machinery in quarries, but all quarries dangerous to the public which are within fifty yards of a highway or place of public resort must be fenced.

London.—*The Port of London Act*, 1908 (c. 68), may in many respects be regarded as a model by which a community can acquire the property in and assets of a large and costly undertaking without the necessity of making any immediate payment in cash. An authority called the Port of London Authority, consisting of eighteen elected members and ten appointed members, of whom two are to be directly representative of labour, is established (s. 1). This Port Authority has (s. 2) general duties as to the improvement of facilities and accommodation in the port, and has transferred (s. 3) to it the undertakings of the dock companies, and also has power to purchase (s. 4) other undertakings likely to prove beneficial to it. Such undertakings are to be paid for by Port Stock, which the Port Authority has power to issue up to a limit of £5,000,000. The powers of the Port Authority practically extend over the whole of the tidal waters of the river, but the Thames Conservancy still retain control over the upper waters.

Lunatics.—Certain minor amendments are effected by the *Lunacy Act*, 1908 (c. 47, U.K.).

Marriage.—*The Naval Marriages Act*, 1908 (c. 26, U.K.), permits of the publication of banns on board his Majesty's ships with respect to an intended marriage by any officer, seaman, or marine borne on the books of such ship.

Married Women's Property.—*The Married Women's Property Act*, 1908 (c. 27, E.), makes a married woman with separate property liable for the maintenance of her parents, thus doing away with the effect of the decision in *Pontypool Guardians* v. *Buck*, [1906] 2 K.B. 896, 76 L.J. K.B. 66.

Mines and Quarries.—*The Coal Mines Regulation Act*, 1908 (c. 57, U.K.), the principle of which had been continually before Parliament for seventeen years previously, but which by no means is universally favoured by the miners whom it is intended to benefit, provides that work below ground in a mine within (s. 8[1]) the Coal Mines Regulations Acts, 1887 to 1905, shall be limited to eight hours during any consecutive twenty-four hours. The operation of the Act can be suspended in case of emergency or in the event of war or imminent national danger.

Parliament.—(i) *The Polling Arrangements (Parliamentary Boroughs) Act*, 1908 (c. 14, E.) effects a minor amendment.

(ii) *The Registration Act*, 1908 (c. 21, U.K.), makes an alteration with

respect to notice of appeal from the decision of a revising barrister, and as to the statement made by him with respect to the case. There is also a provision for expediting the hearing of such appeals.

(iii) *The Polling Districts and Registration of Voters (Ireland) Act*, 1908 (c. 35, I.), confers upon county councils in Ireland the power of altering the polling districts and method of compiling lists of voters.

Patents.—*The Patents and Designs Act*, 1908 (c. 4, U.K.), makes it clear that there is a right of appeal from a Judge of the High Court upon a petition for the revocation of a patent under s. 25 of the Patents and Designs Act, 1907.

Pensions.—*The Old Age Pensions Act*, 1908 (c. 40, U.K.), inaugurates a system of old age pensions whereby every person who fulfils the statutory conditions and is not otherwise disqualified is entitled (s. 1) to receive a pension in accordance with rates set forth in the Schedule to the Act, varying from one to five shillings a week. The statutory conditions (s. 2) are that the person must be seventy years of age, must have been a British subject for twenty years, and have resided in the United Kingdom during that period, and not have yearly means in excess of £31 10*s*. The principal disqualification (s. 3) arises from receipt of poor law relief, but there are other disqualifications in respect of habitual failure to work, lunacy, imprisonment, or liability to a detention order under the Inebriates Act, 1898. The pensions are payable weekly on Fridays (s. 5), and they are inalienable (s. 6).

Poison.—*The Poisons and Pharmacy Act*, 1908 (c. 55, U.K.), gives in the schedule a revised list of articles which are to be deemed poisons, and allows poisonous substances used exclusively in agriculture or horticulture to be sold by persons who are not registered pharmaceutical chemists, provided they are licensed for the purpose and conform to regulations as to keeping, transporting, and selling. S. 3 is designed to prevent the carrying on of a chemist's business unless there is a duly registered pharmaceutical chemist conducting the business on every premises where it is carried on—sub-s. (4) specifically dealing with a company or a body corporate. The Pharmaceutical Society is given (s. 4) extended powers in the matter of making by-laws, and certain poisons when sold have to be distinctly labelled (s. 5) with the word "Poisonous."

Police.—*The Constabulary (Ireland) Act*, 1908 (c. 60, I.), amends the law relating to the pay and pensions of the Royal Irish Constabulary. S. 3 provides for an increase of widows' pensions and s. 6 gives the method of calculating pensions. The schedule gives the rates of pay, which vary from 40*s*. a week for a head constable who has held that rank for at least five years, down to 15*s*. a week for a constable who has been less than six months in the service.

Post Office.—*The Post Office Act*, 1908 (c. 48, U.K.), effects a long-needed consolidation of Post Office Acts, such consolidation having first

been advocated in 1897 by the Joint Parliamentary Statute Law Committee. The present Act repeals (see Schedule) wholly or in part thirty-five earlier Acts.

Public Health.—(i) By *the Public Health Act*, 1908 (c. 6, E.), a rural district council can with the consent of the Local Government Board exercise the same powers with regard to the provision and regulation of markets as an urban district council can with the consent of owners and ratepayers.

(ii) *The Tuberculosis Prevention* (*Ireland*) *Act*, 1908 (c. 56, I.), aims at preventing the spread and providing for the treatment of tuberculosis. The Act is divided into four parts as follows:

Part I.: Notification and Disinfection.

Part II.: Hospitals and Dispensaries.

Part III.: Sanitary Provisions.

Part IV.: General.

Public Meetings.—*The Public Meeting Act*, 1908 (c. 66, U.K.), was the outcome of public irritation caused by the disorderly proceedings of certain women, who thus acted with the avowed purpose of furthering the cause of the extension of the Parliamentary franchise to women. This conduct culminated in an extraordinary disturbance in the ladies' gallery of the House of Commons on October 28, 1908, and in a remarkable scene in the Albert Hall on December 6, 1908, at a meeting of 8,000 or 9,000 persons, chiefly women, who had come together to hear a speech by the Chancellor of the Exchequer (Right Hon. Mr. Lloyd George, M.P.) in support of women's suffrage. The Act makes it an offence punishable summarily to prevent by disorder the transaction of business at any lawful public meeting, and if the offence is committed in a parliamentary constituency between the date of the issue and return of the writ for a parliamentary election the offence is an illegal practice within the Corrupt and Illegal Practices Prevention Act, 1883.

Registration of Title.—*The Local Registration of Title* (*Ireland*) *Amendment Act*, 1908 (c. 58, I.), effects an amendment by providing that omission to register may be rectified in certain cases.

Savings Banks.—By the (i) *Post Office Savings Bank Act*, 1908 (c. 8, U.K.), no acknowledgment need be sent of deposits not exceeding one pound, and the entry in the depositor's book is to be conclusive evidence.

(ii) *The Post Office Savings Bank* (*Public Trustee*) *Act*, 1908 (c. 52, U.K.), enables the Public Trustee to open more than one account, but limits him to one account in respect of each trust, and any beneficiary in respect of whom the Public Trustee has opened an account is not thereby prohibited f om opening an account in his own name.

Societies (Friendly).—*The Friendly Societies Act*, 1908 (c. 32, U.K.), effects certain amendments in the Friendly Societies Act, 1896, which Act it directs (s. 14) is to be printed as so amended.

Telegraphs.—The Telegraph (Construction) Act, 1908 (c. 33, U.K.),

provides (s. 1) facilities for using land near a road or street for the construction of a telegraph line. Overhanging trees which obstruct or interfere with a telegraph line can be (s. 5) lopped.

Tobacco.—*The Tobacco Growing (Scotland) Act*, 1908 (c. 10, S.), repeals the Tobacco Act, 1782, in so far as it prohibits the growing of tobacco in Scotland. Compare the similar Act for Ireland passed in 1897 (see Journal, No. XX. p. 373). The repeal, however, is only to take effect as from a date to be fixed by Order in Council after Parliament has imposed an excise duty on Scottish-grown tobacco. Such a duty was provided for by s. 83 of the Finance Bill, 1909, and the Act would now have been in force had not the Bill been thrown out by the House of Lords.

Weights and Measures.—*The Cran Measures Act*, 1908 (c. 17, E.), introduces into England the measure known as the cran in connection with the buying, selling, delivering, or receiving of fresh herrings. This measure is a wooden barrel or basket which has for long been in use in Scotland and its capacity is determined by regulations made under s. 13 of the Herring Fishery (Scotland) Act, 1815. Provision is made (s. 2) for the verification and branding of the cran measures, and the Act only comes into force upon an order being made by the Board of Agriculture and Fisheries upon the application of a local authority.

Workmen's Housing.—*The Housing of the Working Classes (Ireland) Act*, 1908 (c. 61, I.), provides further facilities for the erection of houses for the working classes in cities and towns in Ireland. Increased powers of borrowing are given (ss. 1-4) to local authorities, and an "Irish Housing Fund" is created (s. 5). The law as to closing and demolition orders is amended (s. 9) and a local authority can accept (s. 12) donations of land, money, or other property for the purposes of the Housing Acts.

2. THE ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore, *Chief Deemster.*]

Nothing of general interest was passed during the year; but important financial legislation is in prospect.

3. THE CHANNEL ISLANDS.

The review of legislation will appear next year.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—18.

Civil Procedure.—Of the bulky volume of Acts for the year 1908, the greater part (385 pages out of 623) is occupied by the new Code of Civil Procedure (No. 5 of 1908), an important piece of legislation which has had a long history. The first Indian Code of Civil Procedure was passed in 1859. This was repealed and superseded by Sir Arthur (Lord) Hobhouse's Code of 1877, which, after a life of five years, was superseded by Mr. Whitley Stokes's Code of 1882. Since then projects for revision of the Code have occupied the time of many successive committees, and have involved the attendance "on special duty" at Simla of sundry eminent lawyers from the plains. A consolidating and amending Bill of some 700 clauses, based on these labours, was introduced into the Council in December 1901 by Sir Thomas Raleigh, went to a select committee of the Council, and was circulated in due course for criticism by judicial and other authorities. The Bill met with a good deal of criticism, which induced the Legislative Department, when under the charge of Mr. (now Sir) Erle Richards, to prepare a new draft on different lines. This draft was considered by a special committee consisting of Mr. Richards, the Chief Justices of Bengal and Bombay, Mr. Ismay, and Dr. Rashbehari Ghose, and, as amended by the Committee, was introduced into the Council by Mr. Richards on September 6, 1907, was passed on March 13, 1908, and came into operation on January 1, 1909. The new Code differs materially in form from its predecessors, and is drawn on lines more nearly resembling those of the English Judicature Acts. It draws a distinction between provisions which embody general principles of procedure and which ought to be uniform throughout India on the one hand, and, on the other, provisions of minor importance which may properly be varied to suit local conditions. The former are embodied in the 158 sections of the Act; the latter are to be found in the first schedule, which contains rules and orders corresponding to the Rules of the Supreme Court in England. The four chartered High Courts at Calcutta, Madras, Bombay, and Allahabad, and the Chief Courts at Lahore and Rangoon, are empowered to make rules regulating their own procedure and the procedure of the civil courts subject to their superintendences, and by such rules to annul, alter, or add to any of the rules in the first schedule. Each of these courts is, for the purpose of making rules, to be aided by a Rule Committee constituted in manner provided by the Act, and the rules are not to take effect until drafts of them have been published for criticism. Thus considerations of uni-

formity have given way to considerations of elasticity. The change was probably wise. The late Mr. Whitley Stokes, whose eminent services in the field of Indian legislation ought never to be forgotten, prefixed to his edition of the Indian Codes Macaulay's maxim, "Uniformity when you can have it; diversity when you must have it; but in all cases certainty." But the framers of the earlier Procedure Codes pushed their laudable desire for uniformity too far. These Codes inconveniently stereotyped matters of detail, had to be qualified by statutory exceptions and exemptions to meet local requirements, became overlaid with judicial decisions, and were difficult to amend. Sir Erle Richards's code has yet to stand the ordeal of experience and criticism, but its passage into law was a notable achievement.

Customs.—The Indian Tariff (Amendment) Act, 1908 (No. 2), raised the customs duty on imported beer, cider, and other fermented liquor from one anna to two annas per gallon. The excise duty was left to be raised to a similar figure by Local Governments under their excise laws. The increase of duty was made on the recommendation of the Excise Commission, who had found that beer-drinking was on the increase among the native population.

Coroners.—The Coroners (Amendment) Act, 1908 (No. 4), enables a coroner, with the concurrence of a majority of the jury, to dispense with a view of the body, makes the report of a Government chemical examiner admissible in evidence, and makes other minor amendments in the Coroners Act, 1871.

Explosive Substances.—The Explosive Substances Act, 1908 (No. 6), is modelled on the English Explosive Substances Act of 1875, and, like that Act, was introduced and passed through all its stages in a single day. It imposes severe penalties (1) for causing an explosion likely to endanger life or property; (2) for attempting to cause an explosion, or keeping an explosive with intent to endanger life or property; and (3) for making or possessing explosives under suspicious circumstances. It is unnecessary to explain here the circumstances which led to the introduction and passing of this measure.

Newspapers.—On the same day was introduced and passed through all its stages the Newspapers (Incitement to Offences) Act, 1908 (No. 7). Under this Act, in cases where, on application made by order of or under authority from the Local Government, a magistrate is of opinion that a newspaper printed and published within his province contains any incitement to murder or to any offence under the Explosive Substances Act, or to any act of violence, he may make a conditional order for the forfeiture of the printing press used or intended to be used for printing or publishing the newspaper, or found on the premises where the newspaper is, or at the time of printing the incriminated matter was printed, and of all copies of the newspaper.

Opportunities are to be given for showing cause against the order, and

for giving evidence for and against it, and the order may be either revoked or made absolute, subject to an appeal to the High Court. When an order has been made absolute against a newspaper, the Local Government may, by gazetted order, annul any declaration made by the printer or publisher under the Press and Registration of Books Act, 1867 (XXV. of 1867), and prohibit any further declaration being made under that Act in respect of the newspaper or of any newspaper which is the same in substance. If any newspaper is printed or published in breach of the prohibition, the penalties under s. 15 of the Act of 1867 are to apply.

Limitation of Suits.—The Indian Limitation Act, 1908 (No. 9), is a useful measure consolidating the Limitation Act, 1877, which had previously contained the general law with respect to the limit of time for the institution of legal proceedings, with the subsequent amending enactments. The Act makes some minor amendments, of which one deals with a hardship caused by a recent decision of the Privy Council, whilst others are ancillary to the new Code of Civil Procedure.

Labour and Emigration (Assam).—The Assam Labour and Emigration (Amendment) Act, 1908 (No. 11), amends an Act which, when passed in 1901, was of a very contentious character, and of which an account will be found in the review of Indian legislation for that year. The amending Act of 1908 arose out of the report of a committee appointed in 1906 to inquire into the supply of labour for the districts of Upper Assam. After considering this report, the Government of India determined to withdraw, by notification under s. 22 of the Act of 1901, the provisions of that Act relating to labour districts from the districts of Cachar and in the Surma valley, and from two districts in Lower Assam (Kamrup and Goalpara). This necessitated a change in the law as to recruitment, and the new Act gives general power to the Local Government to relax or dispense with certain provisions of the Act of 1901 with respect to recruitment. The object is to give a trial in the United Provinces to free recruiting under the "Garden Sirdar" system, with the view of seeing how far an advance can be safely made towards the final abandonment of the special legislation which now controls the movement of labour between two parts of India. It has always been the desire of the Government of India that the present law should disappear, and it has been announced that the situation is to be considered in 1910.

Emigration.—The Indian Emigration (Amendment) Act, 1908 (No. 12), amends the Indian Emigration Act, 1883, and its main object is to exempt from certain restrictions Indian subjects of the French and Portuguese settlements in India who desire to proceed under contract to countries outside India. It does this by enabling the Government of India to determine who are to be deemed to "emigrate" and to be "natives of India" within the meaning of the Act of 1883.

Financial Commissioner (Central Provinces).—The object of the Central

Provinces Financial Commissioner's Act, 1908 (No. 13), is to authorise the appointment of a Financial Commissioner in order to relieve the Chief Commissioner of the Central Provinces, whose administrative work has been increased since the administration of Berar has been placed under him.

Criminal Procedure.—The Indian Criminal Law Amendment Act, 1908 (No. 14), was the third of the Acts arising out of the disturbed condition of India in 1908. It was passed through all its stages at Calcutta in a single day in December of that year, as its two predecessors had been passed at Simla in the previous June. It extends in the first instance only to the two provinces of Bengal and Eastern Bengal and Assam, but may be extended by notification to other provinces.

Part I. of the Act provides a special procedure for the trial of offences which were described by the Law Member of Council as "offences against the State and crimes which from their nature cause widespread alarm among the public." A schedule to the Act specifies offences under certain sections of the Penal Code and offences under the Explosive Substances Act, 1908. Where a magistrate has taken cognisance of any offence so specified and it appears to the Governor-General in Council or to the Local Government that in the interests of peace and good order the procedure under this Part should be applied, an order is made accordingly. Thereupon a magistrate holds an inquiry for the purpose of determining whether there is a *primâ facie* case. The inquiry is to be *ex parte*, and the person charged has no right to be present or to be represented. If the magistrate is satisfied that there is a *primâ facie* case, he frames a charge and sends the accused for trial by a special Bench of the High Court composed of three judges, who sit without a jury.

Part II. of the Act deals with unlawful associations. It defines an unlawful association as meaning an association (*a*) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or (*b*) which has been declared unlawful under the Act. The Governor-General in Council may, by gazetted notification, declare an association to be unlawful if of opinion that it interferes, or has for its object interference, with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace. There are penalties for being a member of an unlawful association, for taking part in its meetings, for contributing or receiving or soliciting any contribution for its purposes, and for assisting its operations in any way. An association means any combination or body of persons, whether known by any distinctive name or not, and it is not to be deemed to have ceased to exist merely by reason of any formal act of dissolution or change of title.

Ports and Port Charges, Registration of Documents, Emigration.—The three Acts which deal with these subjects (Nos. 15, 16, 17) are useful

measures of consolidation, collecting and re-enacting without any change of substance the law which was previously to be found in twenty-one different enactments.

The other Acts passed by the Governor-General in Council during the year 1908 do not present any features of general interest.

2. MADRAS.

Act passed—1.

Landlord and Tenant.—The Madras Estates Land Act, 1908 (No. 1), was the single achievement of the Madras Legislature in 1908, but it is a very important and difficult Act, perhaps the most important that has come before that legislature since the Regulations of 1802. It is one of those great and comprehensive measures for regulating the relations between landholders and occupiers of land which from time to time occupy the attention of the Indian legislatures, and raise some of the most contentious and thorny of the problems with which they have to deal. The Madras Act of 1908 resembles in many of its features the Bengal Tenancy Act of 1885, and some of the most important provisions of the later Act are borrowed from or suggested by the earlier Bengal Act. The necessity for some legislation on these lines appears to have been first suggested in the year 1871 by a High Court decision in what was known as "Chockalingam's case," but it was not until 1882 that the draft of a Bill on the subject was prepared. Then followed the successive drafts, the mass of reports and criticisms, and the correspondence with the Government of India, with which Indian legislators are familiar; and at last the Bill, which eventually became the Act of 1908, was in 1905 introduced into the Madras Council by Mr. (now Sir George) Forbes, who may fairly claim to be the author of the Act. The Bill went before a Select Committee, which sat for sixty days, and some two years elapsed subsequently before it was again submitted to the Council. When it returned there, it was debated with great fullness, knowledge, and ability, and the reports of these debates are full of interest and instruction to students of the peculiarities of Indian land tenures. The provisions of the Act are as difficult to summarise briefly and intelligibly as those of an Irish Land Act, and it may suffice to state what, in the opinion of Mr. Forbes, are the fundamental principles of the measure. According to him they are these: the securing of the ryot's occupancy right in "ryoti" land; the clear definition of ryoti and private land, and the strict conservation of the former as being the land in the estate in respect of which occupancy rights can be secured; the right of the ryot to hold at a regulated and not a contract or rack rent; the preservation of ryoti rights in the waste lands; the securing to the landholder a first charge upon the land for the rent due to him, and also

the right to enhance money rents on certain grounds; the ryot's right of commuting a grain rent into a money rent; the provision of a suitable procedure for empowering the Government to make a record of rights and to settle rents; and, finally, the adjudication generally of disputes between landholders and ryots by the revenue courts, at any rate in the first instance. He went on to explain that the so-called "private lands" represent the "savaram" lands or allotments, freed from all public charges, which were specifically assigned by the Mussulman Government to the zamindars in making settlements of revenue with them. These lands were the remuneration, or rather part of the remuneration, which the zamindar received for collecting the Government revenues and maintaining public order in the zamindari, and rendering such other services as the settlement imposed upon him. All other lands were ryoti, or lands which a ryot could occupy on the customary terms, and the revenue of which was taken into account in fixing the annual payment of the zamindar to the Government. The zamindar naturally endeavoured to extend as far as he could the class of "private lands," and thus restrict the range of occupancy rights. One is reminded of the controversies which have raged over the different classes of Irish land.

3. BOMBAY.

Acts passed—2.

The two Bombay Acts are of no general interest.

4. BENGAL.

Acts passed—6.

Lodging-houses and Pilgrims.—The temple of Jagannath at Puri in Southern Orissa is the most famous place of pilgrimage in India and is the annual resort of thousands of pilgrims, who can now travel by rail to the sacred spot. In the year 1871 the Bengal Legislature found it necessary to make provision for the licensing and regulation of pilgrims' lodging-houses at Puri and on the main lines of road leading thereto, and for the better sanitation of Puri. The Puri Lodging-house (Amendment) Act, 1908 (No. 3), amends the Act of 1871 by providing further safeguards against overcrowding in lodging-houses, by empowering the Local Government to increase the fees for licences for the reception of lodgers with the view to securing funds for sanitation, by making the inspection of lodging-houses more practicable, and in certain other minor particulars. The "Pandas," or temple priests, naturally have a good deal to do with the accommodation of pilgrims, and the Bill as introduced made all Pandas lodging-house keepers

within the meaning of the Act of 1871 and subjected them to regulation accordingly. This interference with the priestly class raised, as might be expected, a good deal of opposition, and the provisions of the Bill were modified in committee. But under the Act as passed the definition of "lodger" is made to include "a person who pays or delivers to his Panda, or to any other person on behalf of his Panda, money in a lump sum, or property, or both, in consideration for the provision of accommodation and bodily comforts by such Panda or other person in any place other than the residence of such Panda." There is no interference with the hospitality afforded to a pilgrim by a Panda in his own house, but arrangements for the accommodation of pilgrims elsewhere are placed under control.

Local Government.—The Bengal Local Self-Government (Amendment) Act, 1908 (No. 5), makes some important alterations in the principal Act of 1885 (No. 3), which it amends, and considerably extends the range of purposes to which district boards may apply their district funds. Those purposes now include the establishment and maintenance of veterinary dispensaries, the entertainment of veterinary assistants, the improvement of the breed of cattle and horses, the training and employment of medical practitioners, the promoting of free vaccination, the maintenance and improvement of tanks and wells which are not under the control of the board, and, in the case of famine and scarcity, minor works of irrigation, the construction and maintenance of hostels attached to private educational institutions, and the construction of residences for district engineers. Every district board is now required to form a sanitation committee and appoint a sanitary inspector, and union committees—*i.e.* committees for groups of villages—are given powers in respect of local sanitation, drainage, and water supply. The Act also prohibits the diversion of the road cess to purposes other than those enumerated in the Act under which it is levied.

Landlord and Tenant.—The Bengal Tenancy Act, 1885, which is the code regulating the relations between landholders and occupiers in Bengal generally, does not apply to the hilly, jungly, and backward division of Chota Nagpur.

The Chota Nagpur Tenancy Act, 1908 (No. 6), a comprehensive measure of 271 sections, now supplies a landlord and tenant code for that division, superseding the previous Acts which applied to it, and adapting to its requirements the provisions of the general Bengal Act. The Act recognises in Chota Nagpur the principle of the settled or occupancy ryot, which had been accepted for many years in the rest of Bengal, strengthens the position of the non-occupancy ryot, declares the customary rights of ryots in respect of jungles and waste land which have been reclaimed and converted into rice lands, and provides for the preparation and publication of records of right which are to include the customary rights in lands still remaining waste or jungle, rights to which the aboriginal ryots of this region attach great importance. To the student of Indian land tenures and customs a com-

parison between this Act and the Act which, as noticed above, was passed in the same year for Madras would be interesting.

The other Bengal Acts of 1908 were only of local interest.

5. EASTERN BENGAL AND ASSAM.

Act passed—1.

Landlord and Tenant.—The Eastern Bengal and Assam Act, 1908 (No. 1), follows closely the Bengal Tenancy Act of 1907 (see last year's review of legislation), and its object is to assimilate to the law in Bengal the law of landlord and tenant in the districts transferred from Bengal to the new Province.

6. UNITED PROVINCES.

Act passed—1.

Waterworks.—The only Act passed by the legislature of the United Provinces in 1908 makes some minor amendments in the Waterworks Act of 1891.

7. PUNJAB.

Acts passed—0.

8. BURMA.

Acts passed—6.

Inoculation and Vaccination.—The object of the Burma Prohibition of Inoculation and Licensing of Vaccinators Act, 1908 (No. 6), is to give power to prohibit the practice of inoculation in local areas where due facilities for vaccination have been provided and also to provide for the licensing of vaccinators. Facilities for vaccination do not yet exist in all parts of Burma. The people of Burma are said to have no strong objection to vaccination in itself, though they prefer inoculation, which is more familiar to them, but they would probably accept vaccination readily enough when inoculation is forbidden, if facilities for vaccination are supplied. The Act does not make vaccination compulsory.

The other Burma Acts are merely of local interest.

9. REGULATIONS UNDER 33 VICT. c. 3.

Regulations made—4.

Pearl Fisheries.—The right to fish for pearl and pearl shell in the territorial waters of Perim belongs exclusively to the Government, and the

Perim Pearl Fishery Regulation, 1908, protects this right by prohibiting fishing by the public except under a licence.

Revenue Settlement.—The Santhal Parganas Settlement (Amendment) Regulation, 1908, stops civil suits relating to land pending the progress of a revenue settlement for the area comprising that land.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* LEWIS MAARTENSZ, ESQ., *First Crown Counsel, Ceylon.*]

Ordinances passed—41.

Church Missionary Society, Property of.—No. 2 vests in the Church Missionary Trust Association all property, movable and immovable, held by or in trust for the Church Missionary Society for Africa and the East. The reason for the enactment is that the Society not being a body corporate has no status in law to protect its property by resort to legal remedies or to enter into valid contracts with reference to it.

The rights of persons claiming title from independent sources are expressly conserved.

Village Communities.—No. 3 removes the difficulty with regard to criminal offences which are punishable under village rules as well as under the general law of the Colony. In such cases the principle of the Village Communities Ordinance, 1889, that the jurisdiction of village tribunals is exclusive has led to the withdrawal from the police courts of cases which would more properly and conveniently be tried by the latter tribunals.

The Ordinance empowers a Government Agent or Assistant Government Agent to direct any case in which the accused is charged with a breach of a rule which is also an offence under any other Ordinance to be tried by the police court having local jurisdiction.

It also extends the jurisdiction of village tribunals so as to enable them to deal with offences punishable under the Prevention of Cruelty to Animals Ordinance, 1907, and under certain sections of the Road Ordinance, 1861.

Graving Docks.—No. 5 empowers the Governor in Executive Council to make rules for the management of the graving dock and patent slip. This power is conferred by s. 4, which also provides for the submission of the rules to the Legislative Council and for the cancellation of any rules which may be disapproved.

S. 6, with regard to the limitation of the liability of Government, is based upon the measures in force for the protection of the port authorities of Bombay and Calcutta.

Land Acquisition (No. 9).—The Ordinance of 1876 lays down as an inflexible rule that, if the amount awarded by the Court to the landowner exceeds the sum tendered by the Government Agent, the latter is liable in costs. This Ordinance gives the Court the power of making a deduction from the landowner's costs, or of ordering him to pay a part of the Government Agent's costs if it appears that the claim was extravagant or that the landowner was negligent in putting his case before the Government Agent.

Surveyors.—No. 10 increases the efficiency of the means provided by the Ordinance of 1889 for protecting the public from dishonest and incompetent surveyors.

Post Office.—No. 11 recasts the postal legislation of the Island in a more practical form and brings it into line with modern postal developments.

Copyright.—No. 12 provides for the registration of copyright in literary and artistic works published in Ceylon so as to give them protection similar to that afforded by the Imperial Copyright Acts.

This is the first enactment of this nature in the history of the Island.

Trade Marks.—No. 15 assimilates the local law with regard to the registration of trade marks in respect of cotton piece goods, cotton yarn, and cotton goods to the law in force in England.

It also prohibits the registration of a word or words alone, whether invented or otherwise, in respect of cotton piece goods and cotton yarn, and the registration of a mark consisting of a line alone in respect of cotton piece goods.

Game Protection.—No. 19 is aimed at the wasteful destruction of game by placing the traffic in dried meat under control. "Dried meat" means the dried or salted flesh of any animal, but does not include dried or salted fish, or any dried or salted meat which has been imported. The burden of proving that any dried meat was imported is placed on the accused.

The Governor in Executive Council is empowered by proclamation to declare that it shall be unlawful to remove dried meat from any revenue district or chief headman's division. Thereupon it becomes unlawful for any person to remove dried meat in quantities exceeding 15 lb. from any proclaimed area.

Any person found removing dried meat in any quantity exceeding 15 lb. in such circumstances as to give rise to reasonable suspicion that he has brought it from a proclaimed area may be prosecuted, and the burden of proving that the dried meat was not brought from a proclaimed area is on the accused.

The Governor in Executive Council may also, by proclamation, prohibit the exportation of dried meat for such period as may be expedient.

An exception is made in favour of tenants of land in the Kandyan provinces who are bound in respect of their tenure to supply dried meat in any specified quantity to the landowner, and they may remove meat from a proclaimed area in such quantities as may be necessary to enable them to render such service.

Rubber.—No. 21 makes special provision to prevent thefts of rubber.

"Rubber" includes the latex of any rubber plant whether fluid or coagulated, and marketable rubber prepared from the latex of any such plant; but does not include any manufactured article wholly or partly made of rubber.

The Ordinance prohibits the purchase of rubber except by persons licensed under the Ordinance or holding a permit from the Government Agent to deal in rubber. Licences are issued free of charge by the Government Agent—who may if he thinks fit refuse to issue a licence to any person—and remain in force unless otherwise determined until December 31 next following the date when they were issued. Permits to deal in rubber may only be issued to superintendents or assistant superintendents of estates.

Licensed dealers in rubber may not purchase or take delivery of any rubber at any place other than the licensed premises, and are bound to keep a correct register of all rubber brought into or removed from the licensed premises, provision being made for the inspection and checking of this register.

The possession of wet rubber (*i.e.* of the latex of any rubber plant in any stage of preparation before the completion of the drying process) under suspicious circumstances renders the possessor liable to be charged with being in possession of stolen rubber, and the burden of proving that he was lawfully in possession of it is thrown on the accused.

Motor Cars.—No. 25 provides (*a*) for the discontinuance of the tax on mechanically propelled vehicles under the Municipal and Local Board Ordinances; (*b*) for the substitution of a uniform rate of taxation based on the weight of the vehicles.

Hotel Keepers.—No. 33 is intended to protect hotel keepers and others in similar positions from being defrauded by persons who, having no means at their disposal, incur liabilities which they are unable to discharge. In some cases such persons have been convicted of cheating, but there is often practical difficulty in proving the fraudulent intention which it is necessary to establish in a charge of cheating.

The effect of the Ordinance will be that, if a visitor incurs liability at an hotel or similar establishment, without giving notice that he requires credit, and then fails to discharge his debt, he will be guilty of an offence, unless he satisfies the Court that he had no intention to defraud.

2. HONG-KONG.

[*Contributed by* THE ATTORNEY-GENERAL.]

Ordinances passed—21.

Emigration (No. 4).—This Ordinance is designed to remove certain restrictions at present imposed upon *bonâ fide* free emigrants, and to safeguard the interest of the assisted emigrants as distinguished from the indentured emigrants.

Under the existing law the various classes of emigrants are accorded like treatment, and it has been found in practice that the regulations required to make effective the control of contract labour are in the case of the free passengers unnecessary and vexatious.

The Ordinance therefore safeguards the interests of assisted emigrants and relieves free emigrants from certain provisions as to residence in boarding-houses.

It also empowers (s. 3) ships specially licensed for the South African coolie traffic under the existing Ordinance to proceed on their return direct to their port of discharge in North China instead of calling at Hong-Kong as at present necessary.

Foreign Corporations (No. 7).—Several Ordinances have recently been passed in regard to individual companies, but the Government was of opinion that it is desirable to have a general Ordinance to permit all foreign corporations, which under their constitution are empowered to acquire immovable property, to acquire, hold, and dispose of the same within the Colony, but subject to their complying with the requirements of the Ordinance.

The Ordinance is on the same lines as those previously passed, but it is made general and is somewhat more comprehensive in its scope.

Opium (No. 11).—This is an Ordinance to prohibit the exportation of prepared opium to China and to French Indo-China.

Widows' and Orphans' Pension Fund (No. 15).—An Ordinance to provide for the Transfer to the Government of Hong-Kong of the Widows' and Orphans' Pension Fund, and of the Management and Control of the Pensions of Widows and Orphans, and to consolidate the laws in relation thereto.

The object of this Ordinance is set forth in its preamble. It was passed under the directions of the Secretary of State as conveyed in Lord Elgin's despatch No. 275 of December 28, 1907.

The Ordinance consolidates the laws hitherto in force and incorporates the necessary amendments.

Interpretation (No. 20).—The reason for amending the Interpretation Ordinance is consequent upon the defect which was discovered in Ordinance No. 3 of 1895 in a recent case which was before the Supreme Court in April 1908 brought for "criminal conversation," and it was then discovered that by the effect of Ordinance No. 3 of 1895 the action for criminal conversation had unintentionally been repealed and did not exist in this Colony. Furthermore, the Ordinance No. 3 of 1895 enacted that, since Ordinance No. 5 of 1860, this form of action was non-existent in the Colony.

Other Ordinances.

1. Fire Brigade (Amendment).
2. Evidence: facilitating admission in evidence of statutes of British Legislatures.

3. Fire Insurance Companies: removal from Register.
5. Chinese Extradition Ordinance (Amendment).
8. Liquor Licences Extension.
9. Evidence Ordinance (Amendment).
11 and 17. Supply.
12. Chemists, Registration of, and Regulation of Sale of Poisons.
14. Public Health (Amendment).
18. Theatres, Regulation of.

3. STRAITS SETTLEMENTS.

[*Contributed by* THOMAS BATY, ESQ., D.C.L.]

Enactments passed—27.

Agriculture.—By No. 11, a fund of $50,000 is authorised to be established for the purpose of *loans to agriculturists*. The fund is to be administered by Commissioners (unpaid). By No. 7, the *Destructive Insects and Pests Act* (1907, Imperial) is practically applied to the Settlements—"trees or plants" being substituted for "trees or bushes." The Imperial Act is slightly extended in scope: the rules to be made may prohibit the landing of suspicious vegetable products generally, even when shipped coastwise—a useful addition. No detailed provisions regarding compensation are made, as in the Act of 40 & 41 Vict. 1877, which is virtually incorporated in the Imperial Act of 1907. And the colonial Act does not in terms enable the executive to frame rules imposing penalties. On the principle *expressio unius exclusio est alterius*, it would seem that the rule-making authority is restricted to making rules for the particular purpose specified, under the common law penalties for misdemeanour.

Mohammedan Marriages.—There is a certain laxity in Mohammedan ideas regarding divorce. Since 1880 a system of facultative registration for them, as well as for divorce revocations and for marriages, has been in operation. It is now made necessary to register these changes of status. Within seven days this is to be done before the Cadi (penalty $25). The proceedings are quasi-judicial, and the Cadi has power to summon any Mohammedan, under a penalty of $10. The provision requiring notice to the lady as a *sine quâ non* is omitted: the matter is left entirely to her consort. Appeals lie to the Registrar within two months; and further to the Governor. But the validity of the divorce, revocation, or marriage is not to be affected by the registration or by non-registration. The Cadi, although a public officer, is (as before) allowed to take a present if he takes the trouble to attend the ceremony of a wedding. Registration may be effected within two months—which the Registrar may extend to three.

The Cadi is now directed to take his records monthly to the Registrar in person; but he is entitled to fees, which was not formerly the case, for

certificates. A new and important power is given to him of trying causes of divorce of the kinds called respectively *Fasah* and *Taalki*. Notice to the husband (wherever domiciled?) may be dispensed with if he is out of the jurisdiction. And it is sufficient to ground jurisdiction that the applicant is of the Cadi's particular sect or nationality, or that she has been resident in the district for four months. It has been doubted whether these divorces are *a vinculo*; but it seems they are; cf. Hughes, *Dict. of Islam*, s.v. *Divorce* (Taluq). Cadis may also be invested with the power of deciding upon claims for marriage portions ($50 the limit) and maintenance ($10 per month). A Mufti may be appointed as assessor to the Registrar. The keeping of registers and the issue of certificates by other persons is made liable to a $100 fine, or on a second occasion a $500 fine and six months' imprisonment.

Bankruptcy.—Execution for over $100 is now (No. 26) allowed to operate as an act of bankruptcy, even if only issuing on a District Court judgment. The international limitation of jurisdiction[1] formerly was that either the debtor or a partner of his should be domiciled in the Colony, or within the year previous should have ordinarily resided or had a dwelling-house there—or that the debtor or his firm should within that period have had a place of business there. This is now altered; the requirements are, alternatively, (1) domicile, (2) carrying on business by an agent, (3) having, within the year, ordinarily resided or had a dwelling-house or place of business within the Colony. Nationality is expressly made immaterial; otherwise the jurisdiction now resembles the British jurisdiction, save for the provision regarding business conducted by an agent.

Extradition.—We have termed No. 18 an Extradition statute, but it is curiously expressed, and does not in terms authorise extradition, nor even (it appears) apprehension, unless the accused was previously under arrest. The enactment regards persons convicted or accused of crime alleged to have been committed in a foreign country who may have been "brought" within the Colony in the course of transmission to another country. It authorises the Governor at the request of the Consul to have such a person apprehended and detained; when the Governor may either release him or deliver him up for the completion of his involuntary voyage. This implicitly legalises his removal from the Colony by the authority to whom he is delivered up. When Russian sailors were arrested at Portsmouth and put on board Russian ships, it was held that the proceedings were invalid. Suppose a revolutionist Russian, *en route* for Vladivostock, forcibly put on board a Russian ship in Singapore harbour, and shot on leaving port—and then suppose the revolution to be successful. The only safeguard against such an occurrence, and the tension which would arise with Russia in such a case, is the acumen and good sense of the Governor in diagnosing political crime. Moreover, how may the transmitting authority

[1] *Vide* No. 11 of 1888, § 6 (d).

treat the accused whilst under detention? Is the foreign law to be applied in this respect? or is the foreign authority to familiarise itself with the colonial regulations? The Act implicitly authorises the person's subsequent detention, and it expressly authorises his recapture; but it does not authorise disciplinary measures against him after he has been handed over. Probably the difficulty will not be acute in practice, as the fugitive will be usually handed over to a ship.

Currency.—The usual Currency Act (No. 27) contains a novel feature. Bearer bills are prohibited, under a penalty, equal to the amount of the bill, on the drawer and acceptor. The indorser, as such, is exempted; but as every one who borrows, owes, or takes up any sum of money on such a bill is subject to the same penalty, it is only the voluntary indorser, and perhaps the indorser for value received, who can take the benefit of the exemption. It is not stated whether the bill is void, but it is presumed it would be. Authorised banknotes are excepted; and all bills not payable on demand. So are cheques drawn by customers or "constituents" on bankers or agents in respect of moneys in the latter's hands (at the date of drawing?—or subsequently to be paid in?). Prosecutions are to be authorised by the Currency Commissioners. Since a bill can always be indorsed in blank, or imported from Java or Sumatra, or the Malay Peninsula, the section seems comparatively ineffective.

Sunday Cargoes (No. 20).—Between 6 a.m. and 9 p.m. on Sunday, no ordinary cargo is to be received on board, loaded, "worked," or discharged. Perishable food, ice, ship's stores, luggage, mails and bunker coal are excepted: so are warships, specified mail-steamers, and native craft. The Governor and heads of Settlements may grant exemptions for $60. The enactment does not extend to the remote Christmas and Cocos Islands. Coal is entirely exempted when no European nor Eurasian nor native Christian is employed. The penalty on the master, and each owner, of $1000 is provided; masters can be summarily arrested, persons in charge of lighters and boats assisting the crime can be fined $50. (If *Du Cros* v. *Lambourne* [1907, 1 K.B. 40] is law in the Colony, they would be principals.) *Quære*, whether *mens rea* must be proved against the owner.

The penalties are to be paid to a fund as to which all that is said is that it is to be called a "Destitute Seamen's Relief Fund" and administered as the Governor in Council directs.

Forests (No. 22).—An important Forestry Act is provided. It may be compared with the Victorian Act of 1907, the Cingalese Act of 1907, and the Grenadan Act of 1906. It is not so well drafted as the Cingalese statute. If land in private hands is desired to be included within the forest limits, it may be acquired under the Acquisition of Land Ordinance of 1890, and thereafter included in the forest. Notifications (in Chinese, English, and Malay) of the afforestation must be inserted in the *Gazette* and conspicuously posted near the land. Three months are allowed for entering claims of rights or

privileges relative to the land affected. The Ceylon Act, more elegantly, limits the operation of the afforestation to lands resumed or acquired by or declared to be the property of the Crown. The Straits Act, enacting broadly that "any land" may be proclaimed (§ 4), then that lawfully occupied land must be acquired *ad hoc* before it can be included (§ 6), and further that claims of rights must be put forward (§ 5), creates a perplexing situation. Are settled occupiers entitled to rely on the expropriation clause? or must they put forward claims (which would be subject to summary disallowance)? And if they are entitled to rely on it that they will be expropriated, what is the object of the "claims" clause? It would seem that the claim must be made, and if not disallowed, then extinguished by expropriation. When the claims have been disposed of, the land may be proclaimed as a reserved forest by *Gazette* notice, subject to such rights and privileges as are conceded by the Governor. It is apparently the intention thus to continue rights and privileges in the nature of *profits à prendre* and easements, which perhaps could not be the subject of expropriation. Yet it is not easy to see how they could have arisen at all against the Crown, or how they could fail to be extinguished by expropriation if claimed over the land of private persons.

Ways and watercourses may thereafter be stopped within the limits of the forest—if the Governor thinks equally convenient provision is substituted or already exists. The public may not "trespass," "pasture cattle," "permit cattle to trespass," or "cut, collect or remove any 'forest produce'" in the forest. "Trespass" clearly has not its legal meaning. That would include all the other acts specified. What it does mean is not defined. The penalty for "trespass" is $50 (or if $25 damage was done, six months' hard labour and/or $500 fine). The bracketed penalty is also imposed in case of cutting, collecting, or removing—a penalty for picking a flower, reminiscent of *Beauty and the Beast.* Kindling fires is, with more justice, made subject to the same animadversion.

For the normal and legitimate *perceptio fructuum*, the Governor in Council may make rules of an elaborate character. "Forest produce" (*i.e.* practically any vegetable product brought from or found in a reserve) is presumed to be Crown property; foresters and policemen may arrest a person reasonably suspected of any forest offence "if there is reason" to believe he will abscond, or if he refuses to give his name and address, or gives a false one. And proceedings against public servants are limited to three months, with one month's notice; nor can they succeed unless malice is alleged and proved. Perhaps unreasonableness would amount to malice for this purpose.

The further provision is made that all tools, boats, carts, and cattle used in the commission of even the most trivial "forest offence" are confiscable. Compensation to the Crown at the rate of $10 for each log felled may also be awarded. A sign of grace is that power to enter private

timber-yards (as in Ceylon) is not included in the Straits Act; nor is the general scheme of marking private-grown timber.

Public Servants (Suits against).—See No. 20, *supra*.

The less important **Miscellaneous** Acts include measures dealing with *Judges* (enabling a judge to act as Attorney-General—No. 1), *Procedure* (Nos. 3, 10), *Currency* (No. 27), *Supply* (Nos. 16, 19), *Local Land Improvement* (No. 6), *Methodist Episcopal Location Board* (No. 5),[1] *Indian Immigration* (substantially extending the labour contract provisions[2] of 1904 to natives of the Netherlands East Indies—No. 21), *Registration of Deeds* (No. 4), *Stamps* (No. 2), *Tamil Immigration* (No. 15), *Theatres* (No. 17), *Pensions* (No. 7), *Reformatories for Federated States children* (No. 9), *Petroleum* (No. 23, consolidating and strengthening the law, and making special provision for import and carriage by sea), *Public Health* (No. 14), *Registration of Deaths* (No. 24), *Certified Chemists* (No. 8), and *Artillery and Rifle Ranges* (No. 12).

4. FEDERATED MALAY STATES.

[*Contributed by* THOMAS BATY, ESQ., D.C.L.]

These communities pursue the commendable plan of printing in full their statutory rules and regulations. As we have previously explained,[3] it is impossible to insert a summary of them here. Statutory enactments have fortunately been few during the year 1908. One set dealt with *Procedure*. Each State enables its own "Supreme Court" to sit in the territory of the others. Conversely, each enables the "Supreme Courts" of the other States to exercise jurisdiction and execute process within its own limits—a truly fraternal arrangement, which might nevertheless lead to curious results if the same subject were in litigation in different States. Besides, the law is conceivably not the same in all the States. A Court, when it executes its process within the limits of another, virtually supersedes the law of the latter by its own. Another set of enactments (repealing and re-enacting Acts of 1907) deal with *Tamil Immigration*[3] on Straits Settlements lines (see Journal, IX. Pt. ii. pp. 395-6)—in fact, in § 6, when it refers to "the Colony" it does not say what Colony is meant. The solidarity of the various States is shown by the clause by which the amounts paid by Pêrák employers under the Pêrák Act may be spent in importing labourers into, say, Selángor (or even into Singapore).

[1] Cf. with this private Act the Ordinances 5 (Bank) and 11 (Masonic) of 1905 and 5 of 1907 (Conventual).

[2] Except as to rate of wages.

[3] Not in Pahang.

Singapore gets an advantage which can hardly have been intended; the Malay Governments contribute to the T. I. fund, as employers, in the Straits Settlements, but the Colonial Government is omitted from the list of contributing employers to the T. I. funds in Malaya. No doubt the Singapore statute is *ultra vires*, internationally, as it cannot bind foreign sovereigns; but the Malay Governments are little likely to take advantage of this plea.

Other enactments regard *Steam Boilers*, *Pensions*, *Truck*, *Reformatories*,[1] *Mineral Ores*,[1] *Pawnbrokers*[1] and *Excise*,[1]—the last-named, an important and apparently novel statute. Palm toddy is (exceptionally) left to free manufacture; except that (it would seem accidentally) its distillation, etc., may be subject to a certain amount of regulation, under the powers to regulate the distillation and storage of alcoholic liquor, by which "excisable liquor" was clearly intended, but not always specified. The *sale* of toddy, however, requires a licence. The Pawnbrokers' Act is also a novelty. It also speaks of "the" Colonial Government.

Negri Sembilan passed a *Waterworks* Act, and Selángor an Act for the support of the *Victoria Educational Institution* at the capital.

Pahang was not ripe for the above interference with distillation and pawnbroking; and it required enactments, probably already passed in the other States, dealing with *Poisons*, *Morphia and Drugs*, *and Education*. The omission to except physicians from the penalty of "using a place for the purpose of administering any 'deleterious' drug" (including morphine) which we noted in the Straits Statutes (Journal, VI. Pt. ii. p. 343, IX. Pt. ii. p. 395) is imitated.

5. MAURITIUS.

[*Contributed by the Procureur-Général*, A. HERCHENRODER, ESQ.]

Ordinances passed—20.

Commissioners Amendment.—By Ordinance No. 2 express power is taken to add to the persons named in any Commission issued by the Governor with the advice and consent of the Council of Government.

Institute.—No. 5 empowers the Board of Directors of the Mauritius Institute to admit and incorporate other scientific or literary societies *in esse* or *in posse*; it further contains provisions to regulate the transfer to the Institute of suitable books and collections of any person or society.

Lesser Dependencies.—No. 7 (Art. 1) excludes from the operation of the Lesser Dependencies Ordinances, Nos. 3 of 1881 and 4 of 1904, the

[1] Not in Pahang.

Island of Coëtivy, which now forms part of the Colony of Seychelles under Letters Patent of January 13, 1908; while Arts. 2 and 3 give certain powers to the Visiting Magistrates of the Lesser Dependencies to institute inquests in cases of violent or suspicious deaths, and to direct *proprio motu* certain amendments in Civil Status registers.

Evidence.—No. 9 adapts to this Colony, with the necessary terminology, the Act 7 Ed. VII. c. 16, dealing with the proof of statutes of the United Kingdom and of British possessions and protectorates.

Criminal Procedure.—No. 11 adapts the provisions of s. 92 of 24 & 25 Vict. c. 96 to the Colony and provides for the joinder of alternative counts charging the same person for larceny (with or without aggravating circumstances) and for being found in possession of or for having unlawfully received the proceeds of such larceny.

District Courts.—Ordinance No. 12 regulates in District Courts—

(1) the order of imprisonment in lieu of fine when the sentence includes imprisonment or penal servitude;

(2) the order of imprisonment in lieu of costs;

(3) the procedure when sentences of imprisonment and of fine are passed on the same day in two different cases on the same person;

(4) the passing of concurrent or of consecutive sentences when a person convicted is already undergoing imprisonment under a prior sentence;

(5) the recovery of "poundage" expenses.

It also gives power to convict for attempt on an information charging the complete offence, and makes embezzlement interchangeable with larceny.

Labour.—By No. 12 certain modifications are made in the Labour Ordinance No. 12 of 1878; the most important of which is the substitution for what is known as the "double cut" (viz. the forfeiture to the employer of two days' wages for each day of illegal absence) of a system by which in the case of one or more illegal absences during the working days of any week, the indentured servant forfeits his wages for the Sunday following (Art. 6), and is treated as an habitual idler and punished accordingly if the total number of illegal absences during any one month exceeds nine working days (Art. 7).

This alteration of the system is the outcome of long-standing objections held and urged by the Imperial and Indian Governments to the principle of that system.

The other modifications lie in the extension of the protective powers of the Protector of Immigrants (Arts. 1, 2, 4, 11); in the re-modelling of penalties for breaches of contract by servants (Arts. 2, 7, 8); while a new provision (Art. 9) was inserted to permit of a corresponding prolongation of contract of indentured servants sentenced to undergo imprisonment during the period of their engagement.

The Ordinance is to come into force on a day to be fixed by Proclamation (Art. 13).

Customs.—No. 14 consolidates and revises the customs duties, mainly in accordance with the recommendations of a Special Committee of the Council appointed in 1905, to report on the Revision of the Customs Tariff.

The Repeal Schedule contains no less than 26 enactments.

Distillation of Oils and Essences.—No. 15 authorises under certain conditions and restrictions the use of stills for the distillation of oils and essences.

Parochial Councils (Roman Catholic).—No. 16 "modernises" the old law (Proclamation March 30, 1825) relating to the constitution and powers of Roman Catholic Parochial Councils (Fabriques); it does away with much obsolete matter and makes better provision, *inter alia*, for the renewal of the "Fabriques"; and it increases the controlling powers of the Bishop over the "Fabriques" and their powers of administration.

Savings Bank.—No. 17 adapts the procedure traced out in 54 & 55 Vict. c. 21, s. 11, in respect of the payment of interest upon deposits in the Post Office Savings Bank after the total has reached the maximum allowed.

Cultivation of Cocoa-nut Trees on Pas Géométriques.—No. 19 regulates the duration and conditions of leases of Pas Géométriques for cocoa-nut plantations: power is given to the Governor to grant leases of Pas Géométriques by private contract (as in the case of Crown lands) for a period greater than twenty but not exceeding thirty years.

Lesser Dependencies.—No. 20 empowers the two Magistrates of the Lesser Dependencies to act as relieving Magistrates in Mauritius, when available and qualified as provided by the Ordinance.

Miscellaneous Ordinances.

No. 1 amends Ordinance No. 28 of 1876 (Paper Currency).

No. 3 declares the office of Coxswain in the Customs Department to be a pensionable office while held by Mr. Hudgee Meeah.

Nos. 4 and 18.—Supply.

No. 6.—Registration of bonds of public officers.

No. 8 amends the Customs Tariff.

No. 10.—Application of Ordinance No. 11 of 1860 to Dependencies.

No. 13 amends the Labour Law, No. 12 of 1878.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* HERMAN COHEN, ESQ.]

Public Acts passed—21.

Of the 125 pages containing these statutes, seventy—it is, perhaps, significant—are taken up with the *Customs Tariff* Act, 1908 (No. 7 amended by No. 13). Schedule A is an object-lesson of the infinity of taxable things. There are two Supply Acts (Nos. 2 and 21) and seven Appropriation Acts (Nos. 6, 9, 10, 11, 12, 18 and 19).

Excise Act Procedure Act, 1907 (*sic*) (No. 1).—The Excise Tariff Act, 1906, in imposing excise duties on agricultural machinery, provided "that this Act shall not apply to goods manufactured by any person in any part of the Commonwealth under conditions as to the remuneration of labour which . . . (*d*) are on an application made for the purpose to the President of the Commonwealth Court of Conciliation and Arbitration declared to be fair and reasonable by him. . . ." The present Act regulates procedure on such applications. Some of its provisions seem novel, *e.g.*:

3. In the hearing and determination of any application the President shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform his mind on any matter in such manner as he thinks just.

5. On the hearing of any application no party shall, except by consent of all the parties and by leave of the President, be represented by counsel or solicitor.

8. No person shall, during the hearing of any application, wilfully insult or disturb the President, or interrupt the proceedings on the application, or use any insulting language towards the President, or by writing or speech use words calculated to improperly influence the President, or any assessor, or any witness, or to bring the President into disrepute, or be guilty in any manner of any wilful contempt of the President. *Penalty*, £100.

By ss. 11 and 12 no employer is to dismiss any employee and no employee is to cease to work on account of any evidence given by the other on such an application under a penalty on the former of £50, and on the latter of £10. In each case the onus is on the *defendant* to show that he has not contravened the section.

Quarantine (No. 3), a long and drastic Act, giving the *Commonwealth* authorities ample powers to deal with the matter.

Australian Industries Preservation Act, 1907 (*sic*) (No. 5), amending the principal Act, 1906, of which Part II. is entitled "Repression of Monopolies," and Part III. "Prevention of Dumping." The Act as amended is printed in an Appendix.

Excise Tariff (No. 8) was amended by *Excise Tariff* (Starch), 1908 (No. 14). Tariffs seem to keep a legislature busy.

Surplus Revenue (No. 15) came into force "on a day to be fixed by proclamation," which was June 13. The statute regulates a system by which the Commonwealth may return to a State any surplus of the revenue collected from it.

Invalid and Old Age Pensions (No. 17).—"Old age" means sixty-five years, or in the case of permanent incapacity, sixty. The Governor-General may, by proclamation, declare that women's old age begins at sixty. "Invalid pension" may be claimed by "every person above the age of sixteen years who is permanently incapacitated for work by reason of an accident, or by reason of his being an invalid, and who is not receiving an old age pension." No pension is to exceed £26 a year, and the pensioner's yearly income must not exceed in all £52. The scheme is elaborate and apparently coherent; the community for which it is designed is not so obviously different from our own but that some of its details might advantageously be adopted in this country. Notable is the enactment that when a pensioner "misspends" his income in any way or "is unfit to be entrusted" with it, there is machinery for paying it *in trust* for him, or for suspending or forfeiting it.

Election Expenses Reimbursement (No. 20).—Certain parliamentary elections having been declared void—presumably through no fault of the candidates returned—those gentlemen are reimbursed their election expenses by the Commonwealth.

2. NEW SOUTH WALES.

[*Contributed by* NORMAN BENTWICH, ESQ.]

Public Acts passed—34.

Both in number and in importance the output of legislation of the Colony during the year 1908 considerably exceeds the output of 1907. Acts were passed dealing with the constitution of trade-boards to determine the condition of employment in certain industries, and with the provision of a minimum wage. And an Act to provide for the making and levying of rates on the unimproved value of land in the city of Sydney is also interesting, in view of the controversy upon the land-taxes in this country. The Pure Food Act is a remarkable attempt to ensure honest trading and check fraudulent advertising.

Supply.—Nos. 2, 5, 7, 21.

Industrial Disputes (No. 3).—The first part of the Act provides for the formation of an Industrial Court in substitution for the Court of

Arbitration constituted by the Industrial Arbitration Act, 1901. The Court is to consist of a Supreme Court judge or a District Court judge appointed by the Governor, sitting with or without assessors, who shall be elected by the parties to an industrial dispute. It will be a Court of Record, and the judge will hold office for a period of seven years, and will be liable to be removed only upon the same grounds as a Supreme Court judge is by law liable to be removed from office.

Part II. deals with the constitution of Industrial Boards. On application to the Industrial Court by an employer of not less than twenty employees, or a trade union registered under the Act, or an industrial union, the Court, if satisfied that the application is bona fide, may recommend to the Minister that a Board be constituted for an industry or group of industries, and the Minister shall then direct a Board to be constituted (s. 14).

The Board shall consist of a chairman and not less than two or more than ten other members, as determined by the Industrial Court, of whom one-half shall be employers and one-half employees who have been or are actually engaged in the industry. The members of a Court shall be appointed by the Governor, but the appointment of members other than the chairman shall be made on the recommendation of the Court from persons elected by the employers and employees respectively of the industry. These members shall by an absolute majority nominate some person not then a member of a Board to be chairman, and in default of such nomination the Governor may appoint to the office a Supreme Court judge or District Court judge. Proceedings before a Board shall be commenced by reference of any dispute by the Industrial Court or application to the Board by employers or employees in the industry (s. 26).

The Board may decide all disputes and rescind and vary any of its awards, and in so doing may (*inter alia*) :

(*a*) fix the lowest prices for piece-work and the lowest rate of wages payable to employees ;

(*b*) fix the number of hours and the times to be worked ;

(*c*) fix the lowest rate for overtime and holidays ;

(*d*) fix the number of apprentices and improvers and the lowest prices and rates payable to them (s. 27).

Within one month after publication of award by the Board, any trade union or person bound by the award may apply to the Industrial Court for leave to appeal to such Court. The union may intervene at any time, when, in the opinion of the Minister, the public interests are likely to be affected by the award, either before the Board or the Court.

Part III. deals with the enforcement of awards. If any person does any act in the nature of a lock-out or strike, or takes part in such things, or instigates to or aids in any of them, he shall be liable to a penalty not exceeding £1,000. Penalties are provided for breach of an award, and for the unlawful dismissal of an employee merely by reason of the fact that

he is a member of a Board or trade union, or is entitled to the benefit of an award. A trade or industrial union may be made liable, when any of its members have taken part in a strike or lock-out, unless the trustees of the union prove that by means that are reasonable under the circumstances they endeavoured to prevent them from taking such action (s. 46).

The decision of an Industrial Court is to be final.

Subventions to Friendly Societies (No. 6) provides that friendly societies may apply through their trustees for a subvention from the State for sick-pay, medical attendance, and funeral donations; and where the registrar makes a recommendation to the Minister, there shall be paid to the society one-half its cost for sick-pay in respect of the period of sickness after twelve months from the commencement of each case of continuous sickness for all male members less than sixty-five years of age and all female members less than sixty years of age; and the whole cost for sick-pay in respect of members above those ages. There shall also be paid annually to the society an amount equal to the total contributions chargeable under its rules for the benefit of medical attendance and to assure the payment of funeral donations in respect of such members.

Prisoners' Detention (No. 11).—This Act enables a magistrate to order a convicted prisoner to be detained in a lock-hospital when it is certified by the prison surgeon that he is suffering from a contagious disease. The period of detention shall run concurrently with, but may exceed, any term of imprisonment or penal servitude to which the prisoner has been sentenced.

Police Officers (Amendment) (No. 12), which is in part directed against prostitution, amends the Vagrancy Act, 1902, and enacts that a male person shall be deemed a rogue and a vagabond who knowingly lives wholly or in part on the earnings of prostitution, or in any public place solicits or importunes for immoral purposes; when a male person is proved to live with or to be habitually in the company of a prostitute, and has no visible means of subsistence, he shall, unless he satisfies the justices to the contrary, be deemed to be knowingly living on the earnings of prostitution (s. 4).

It is also provided that a woman comes within the Vagrancy Act who, being a common prostitute, solicits or importunes for immoral purposes any person who is in any public street or place; and when a female is arrested for any offence of this kind, the justice may commit her to be detained for any period not exceeding twelve months in an institution established by the Government as a reformatory under the Act, or impose imprisonment, or suspend the execution of the sentence upon certain conditions on the violation of which she may be arrested, and the justice may then direct that the original sentence be put into force (s. 5).

Every person who, in or near any public street or place, and within view or hearing of a person passing therein, behaves in a riotous, indecent, or insulting manner, or uses any threatening, abusive, or insulting words, is liable on conviction to a penalty not exceeding £5 (s. 6).

The same section imposes a penalty on the owner, occupier, or agent of a house for permitting prostitution therein; and it enables the owner to evict within seven days an occupier when he has reasonable grounds to suspect that the house is being used for immoral purposes.

Another part of the Act provides that a police magistrate or two justices may, at the request of an employer, nominate any person employed as caretaker, etc., as a special constable. In Part VI. the possession and smoking of opium are prohibited, and also the keeping of a place for smoking opium. Constables may enter and search houses which are suspected of being used as opium-dens and arrest the owner or occupier.

Theatres and Public Halls (No. 13).—This Act provides for the licensing of places of entertainment by the Colonial Secretary. Whenever he is of opinion that it is fitting for the preservation of good manners and decorum so to do, the Minister may prohibit or regulate the holding of any public entertainment.

Private Hospitals.—No. 14 provides for the licensing, regulation, and inspection of private hospitals. The fact that two or more persons not members of the occupier's family are received in any house in any one month for treatment or care is *primâ-facie* evidence that the house is a private hospital.

Industrial Disputes (Amendment).—No. 24 amends the principal Act (No. 3 above) in a number of details, and adds a number of trades for which Boards may be constituted.

Sydney Corporation (Amendment) (No. 27).—This Act amends the Act of 1902, and provides for a number of innovations in the municipal government. The council in every year is to levy a general rate of not less than one penny in the pound upon the unimproved capital value of all rateable property in the city, in lieu of the existing land tax. For the purpose of making the rate the council shall, at least once every five years, cause valuation to be made of the unimproved capital value of all rateable property in the city. Provision is made for cases where the lessee has agreed to pay the rates.

In Part V. of the Act the council is given power to establish infants' milk depôts, and to borrow moneys for that purpose and pay for the maintenance and management of the depôts out of the city fund.

Local Government (Amending) (No. 28).—This is an Act which amends the Local Government Act, 1908, and several other Acts, in a number of particulars. It adds to the functions of local councils (among other things) the regulation and control of all hoardings in the area, and empowers them to prevent the erection or use of such hoardings as may affect injuriously the amenities of a public park or disfigure the natural beauty of a landscape or harbour foreshore. At least once every three years a council shall cause valuation to be made of all rateable land in its area. In a municipality such valuation shall be of the unimproved capital value, the improved

capital value, and the assessed annual value; and in a shire the valuation of unimproved capital value is compulsory, and of the other values optional.

Minimum Wage.—No. 29, provides that no workman or shop-assistant shall be employed at a lower weekly wage than four shillings, irrespective of any amount earned as overtime. It is forbidden to receive any premium or bonus for engaging any female in the clothing and tailoring trades. The minimum overtime pay for every male workman or shop-assistant under sixteen and every female is fixed at threepence for every hour or portion of an hour, which shall be paid at intervals of not more than one month. The employer is to pay a sum of not less than sixpence as tea-money to each such person whenever he is required to work overtime. He must keep a record of overtime worked, which must be produced to an inspector whenever he is called upon. The Act does not apply when all the persons employed are members of the employer's family, related in the first or second degree by blood, or first degree by marriage, to the employer.

Pure Food (No. 31).—This Act is in five parts: in the first, provision is made for the appointment of an advisory committee for the purposes of the Act, to consist of health and science experts. Part II. prohibits the sale of foods adulterated or falsely described; and packages of food are to be labelled with the description and weight of their contents. On the recommendation of the advisory committee the Board of Health shall examine and report upon any food, drugs, or appliances advertised, making any comment which it thinks desirable in the public interest; and it may have the report circulated in any newspaper, or prohibit the advertising of any article which it considers to be injurious to life or health, or which is useless for the advertised purposes of cure. Part III. provides for the inspection and analysis of such foods, and entering into the places where they are stored or manufactured; and Part IV. for the penalties and legal procedures in the case of violation of the Act. If the certificate of the Government analyst states that the adulterated article is injurious to health, or if the offence in the opinion of the Court was committed wilfully or with culpable negligence, the person accused shall be liable to imprisonment.

Coal Mines Regulation (Amending).—No. 33 provides penalties upon an unqualified person being employed as mine-electrician, and directs the appointment of examiners who may grant certificates of competency as mine-electricians.

3. QUEENSLAND.

[*Contributed by* W. F. Craies, Esq.]

Acts passed—20.

Constitution.—S. 9 of the Queensland Constitution Act of 1867 empowered the State Legislature to alter the constitution of the Legislative Council, subject to the following provisoes :

(1) That it shall not be lawful to present to the Governor for His Majesty's assent any Bill by which any such alteration may be made unless the second and third readings of the Bill have been passed with the concurrence of two-thirds of the members for the time being of the Legislative Council and Legislative Assembly ; and

(2) That the Bill shall be reserved for the signification of His Majesty's pleasure thrice, and a copy thereof shall be laid before both Houses of the Imperial Parliament for at least thirty days before His Majesty's pleasure thereon is signified.

The Australian States Constitution Act, 1907 (7 Ed. VII. c. 7), provides that it shall not be necessary to reserve any Bill passed by an Australian State Legislature, except (*inter alia*) a Bill which alters the constitution of the Legislature of the State or of the House thereof. 8 Ed. VII. No. 2 gives effect to the Imperial legislation by repealing the two provisoes above set forth.

Two Acts apply to the State the principle of the Referendum, adopted from Switzerland.

1. *The Parliamentary Bills Referendum Act*, 1908.—8 Ed. VII. No. 16 provides that when a Bill passed by the Legislative Assembly has been twice rejected by the Legislative Council, the Governor in Council, after the close of the session in which the Bill was rejected a second time, may by proclamation direct that the Bill shall be submitted to a referendum of the electors (s. 4). The Act directs how the matter is to be submitted to the electors, and how the poll is to be taken and its result ascertained.

If the referendum vote is in favour of the Bill, it is to be presented to the Governor for assent; and if the assent is given, it becomes an Act of Parliament as if it had been passed by both Houses (s. 10).

The Act defines "rejected a first time" and "rejected a second time." The definitions require that :

The Bill should be sent up to the Legislative Council not less than one month before the close of the session, and that the Council should either have rejected or failed to pass the Bill or should have made amendments in which the Legislative Assembly does not concur, and that the Bill thus rejected should be sent

up again in substantially the same form in the next Session of Parliament and not less than three months after the first rejection and should have been again rejected (as above defined) not less than one week before the close of the Session. (s. 3.)

8 Ed. VII. No. 11 provides for a referendum to the electors of the question whether religious instruction shall or shall not be given in State schools. The ballot-paper is in the following form:

THE RELIGIOUS INSTRUCTION IN STATE SCHOOLS REFERENDUM ACT OF 1908.

Ballot-paper.

Are you in favour of introducing the following system into State schools, namely:—

The State schoolmaster, in school hours, teaches selected Bible lessons from a reading-book provided for the purpose, but is not allowed to give sectarian teaching:

Any minister of religion is entitled, in school hours, to give the children of his own denomination an hour's religious instruction on such day or days as the School Committee can arrange for:

Any parent is entitled to withdraw his child from all religious teaching if he chooses to do so.

YES.
NO.

Directions (to be printed in red ink).

If you desire religious instruction in State schools, vote thus—

YES.
~~NO.~~

If you object to religious instruction in State schools, vote thus—

~~YES.~~
NO.

This referendum was to be taken on the same day as the first General Election which ensued after the passing of the Act, April 21st, 1908.

The Elections Act, 1908 (8 Ed. VII. No. 5), makes new provision[1] for recording the votes of electors who at the time of an election are absent from the district for which they are enrolled.

The scheme of the new legislation is to require an elector absent from his own district to record his vote at a polling-place of the district in which he happens to be. Elaborate precautions are taken to ascertain the identity, qualification, etc., of the "absent voter." Votes thus taken are transmitted by the presiding officer to the returning officer for the district for which the vote is tendered, and provision is made for his dealing with the vote in his return.

Factories and Shops.—8 Ed. VII. No. 4 amends in many details the

[1] Superseding the provisions 78 k to 78 t inserted in the Consolidated Elections Acts.

principal Factory, etc., Act of 1900.[1] S. 12 fixes a minimum scale of wages payable in sterling money for all persons employed in any capacity in a factory or shop. S. 14 regulates in great detail the rules as to working-hours and overtime for females and male young persons.

S. 19 fixes a general maximum period of employment in shops—fifty-three hours a week or nine and a half hours in any one day (excluding in either case time allowed for meals). Special provisions are made as to certain trades, as to females and young males, and as to the conditions under which overtime may be worked (s. 19).

Shopkeepers who have to close are protected by a prohibition against hawking during closing hours goods to which the closing rules apply (s. 25).

Land.—8 Ed. VII. No. 14 amends the Lands Act, 1897. Power is given to proclaim land as open for selection on perpetual lease. The conditions as to rent, etc., are prescribed by s. 136 c, and after the first ten years involve applications to the Land Court to fix the rent. Provision is also made for opening lands for selection on perpetual town allotment leases or perpetual suburban allotment leases (s. 175 a). In these cases competitors for a lease bid a capital sum and pay rent calculated for ten years at three per cent. on the upset price, or on the sum bid if higher, and thereafter a rent fixed by the Land Courts.

A further provision is made for proclaiming land for selection as a free homestead. When the selector has complied with certain conditions as to improvement, he gets a five years' lease at a peppercorn, subject to continuous personal residence on the land, and without power to mortgage or transfer his interest, but with a right on certain terms to acquire the fee simple (s. 148 a, s. 141 b). In the case of grazing homesteads created under former legislation, the holder's powers of mortgaging during the first five years of the grant are limited (s. 179 a).

Land Surveyors.—8 Ed. VII. No. 3 provides for the registration of land surveyors and the control of their practice. It constitutes a Board of Surveyors to examine, register, and certify land surveyors and to deal with professional misconduct, after inquiry and subject to review on questions of law by the Supreme Court. Only registered surveyors will be allowed to practise as surveyors or to make "authorised surveys." These surveys mean surveys authorised or required under any Act dealing with the alienation, leasing, and occupation of Crown lands, or with mining, or affecting titles to land, or by the proprietor, lessee, or mortgagee under any act affecting titles to land. To effect such surveys the surveyors have special powers of entry upon land (s. 15), and may be made to correct at their own expense, or pay for the correction of, errors in such surveys, if the correction is required or made at the instance of the Surveyor-General, Registrar of Titles, or other public authority.

Old Age Pensions.—8 Ed. VII. No. 6 (passed April 15, 1908) pro-

[1] Journal, N.S. vol. iii. p. 352.

vides for the payment out of State funds, without contribution, of pensions to persons in Queensland who have attained the age of sixty-five years and satisfy the necessary requirements, and are not aliens, Chinese, or Asiatics (whether British subjects or naturalised or not), aboriginal natives of Australia, Africa, New Zealand, or the Pacific Islands. Aliens who are naturalised six months before claiming pensions can get them. A woman who has married an alien is not disqualified by reason only of the marriage.

The statutory requirements are:

(1) Residence in Queensland at the date of application and (continuously or not) for twenty years before that date, including five years' continuous residence before the date.

(2) Good character and temperate and reputable life during the five years immediately preceding the application.

(3) Not within such five years to have deserted husband or wife or failed to provide for children under fourteen.

(4) Inability of the applicant to maintain himself.

(5) Not to have property exceeding in net capital value £260.

(6) Not to have directly or indirectly deprived himself of property or income so as to qualify for pension.

Pensions may not exceed £26 a year, and are subject to reduction by £1 for every complete pound of income of the applicant above £26, and if he has an income, by £1 for every £15 of the net capital value of his accumulated property.

Machinery and Scaffolding.—No. 9 makes elaborate provisions for the inspection of boilers and other material and of scaffolding. The administration is to be carried out by State inspectors. Part III. prescribes precautions against accidents—*e.g.* restricting employment of females or males under sixteen in working lifts, and of persons under fourteen in working or attending to machinery run by gas, steam, water, or other mechanical power, and prescribing the fencing of certain machinery. Part IV. regulates the inspection of machinery, and Part VI. requires notification of accidents and inquiries into their cause. This part does not apply to mines. Part VII. provides for the examination and certifying of engine-drivers. Part V. regulates the duties and liabilities of owners of machinery.

Sugar Works.—8 Ed. VII. No. 10 incorporates the State Treasurer for the purposes of the Sugar Works Guarantee Acts, and gives him powers of buying, holding, and alienating land, and provides for suits against him in his corporate capacity. The Act further provides for the disposal of land acquired by foreclosure or mortgages under the Act, or to release mortgaged lands.

Statute Law Revision.—8 Ed. VII. c. 18 is for the revision of the Statute Law. Besides repealing certain enactments (Schedule I.) and correcting certain other enactments and (or) their marginal notes (Schedule III.), it contains a schedule (II.) of collective titles which has the advantage

of alphabetical arrangement, and provides for the citation of groups of Acts to which a collective title has been or shall hereafter be given. Consolidation is facilitated by the following clause:

"3. When an enactment in any Act amends any prior Act, (*a*) merely by the omission of words; or (*b*) merely by the addition of words; or (*c*) by the omission of words and the insertion of other words, whether in lieu of the omitted words or not, or by the omission of the whole of an enactment with or without the substitution of another enactment therefor, in every such case it shall be sufficient in any future edition of the Statutes of Queensland to reprint such prior Act as amended by the subsequent enactment, and it shall not be necessary to reprint the subsequent enactment by which such amendment is made."

Technical Instruction.—9 Ed. VII. No. 7 provides for the creation of a Central Technical College in Brisbane, and for the establishment of additional educational institutions and training colleges to be treated as part of the Central College, and also for the establishment of other technical colleges in other parts of the State (s. 5). The Act contains no definition of technical instruction. The administration is put under the Secretary for Public Instruction, who may prescribe the subjects to be taught and regulate the management, good government, and discipline of the College, and the examinations, diplomas, and certificates (s. 9). The expenses are to be covered (*a*) by the funds of certain existing institutions (ss. 3, 4) and fees of students, and (*b*) by State grants (s. 7). The Act restricts the payment of State grants to colleges or institutions for technical instruction which are not subject to the Act (ss. 10, 11).

Wages Boards.—8 Ed. VII. No. 8 provides for the creation of Wages Boards. It is in the main a transcript of portions of the Factory Act (No. 1975) of the State of Victoria,[1] and seeks to provide for a minimum wage in certain industries.[2]

Supplemental Complete List of Acts Passed.

8 Ed. VII., Nos. 1, 15, 17, and 20, Appropriation.
No. 2. Constitution.
No. 3. Land Surveyors (Registration and Control).
No. 4. Factories and Shops.
No. 5. Elections.
No. 6. Old Age Pensions.
No. 7. Technical Instruction.
No. 8. Wages Boards.
No. 9. Machinery and Scaffolding Inspection.
No. 10. Sugar Works Guarantee.

[1] Journal, N.S. vol. vii. p. 445.
[2] Cf. the Imperial Trade Boards Act, 1909.

No. 11. Religious Instruction in State Schools (Referendum).
No. 12. Hampden—Mount Elliott Railway Agreement.
No. 13. Albert River, etc., Railway Agreement.
No. 14. Land.
No. 16. Parliamentary Bills Referendum.
No. 18. Statute Law Revision.
No. 19. State Loan.

4. TASMANIA.

[*Contributed by* B. C. Ferrers, Esq.]

Acts passed—60.

Limited Partnerships (No. 6).—This Act reproduces *in toto* the provisions of the English statute 7 Ed. VII. ch. 24.

Prison Act Amendment (No. 10).—This enactment amends the principal Act of 1868.

S. 4 empowers the Governor of State to make regulations for the mitigation or remission of sentence of any prisoner as an incentive to, or reward for, good conduct. He may at any time release a prisoner on his recognisances (s. 5).

Licences may be granted to prisoners to be released on parole during any period of any term of imprisonment, the sentence being deemed to continue although execution is suspended (ss. 6, 7).

Ss. 9-12 deal with the revocation and forfeiture of licences.

A prisoner must give notice of his place of abode, and must also report himself once a month to the sheriff (s. 13).

Failure to comply with this provision is punishable under the Act, which also provides penalties for failure to produce, or breach of the conditions of, a licence, on the part of a prisoner on parole (ss. 14-17).

Public Health Amendment.—No. 16 amends the Public Health Act, 1903.

S. 4 imposes upon the parents of a child residing in a house where an infectious disease has broken out, the duty of giving notice to the head teacher of the school which the child attends.

No child who has suffered from any infectious diseases within the space of three months, or who has resided in a house in which any such disease has existed within the space of eight weeks, is to be admitted to school unless a doctor's certificate be shown to the head teacher (s. 5).

Free Education (No. 17).—This Act provides that in future education in primary State schools shall be free.

Land Tax Continuation (No. 18).—Land tax, as authorised under the Act of 1905, is levied for the year 1909.

Railway Survey.—No. 19 authorises the Minister of Lands and Works to cause a survey of a line of railway to be made.

Any person appointed by the Minister may enter on any lands without giving notice (s. 4).

S. 5 imposes a penalty of £20 on any person who hinders or interferes with an official appointed under the Act.

Marine Board Amendment (No. 31).—The Act of 1889 is amended and power to borrow sums of money on the security of the rates is given to the Marine Board of Launceston. Various provisions are made with regard to pilotage and the granting of certificates to the owners of steamships.

S. 4 makes the master of a vessel responsible for the payment of fees due for pilotage.

Medical Practitioners.—No. 32 consolidates and amends the law regulating the practice of medicine in Tasmania. The Acts of 1843 and 1868 are repealed.

Part I. deals with the Medical Council. This is to consist of nine members of the medical profession to be appointed by the Governor (s. 3).

S. 7 provides for the registration by the Council of all legally qualified medical practitioners. The name of any practitioner may be removed from the register if, in the opinion of the Council, he has been guilty of infamous conduct in respect of his profession (s. 10).

Part II. of the enactment refers to the qualification to be possessed by medical practitioners. Under s. 15 any person who, being unregistered, represents himself to be a doctor, is liable on summary conviction to a fine not exceeding £50. S. 16 entitles doctors to sue for their fees.

Pharmacy (No. 33).—Part I. establishes a Board of Pharmacy and defines its powers and authorities.

Part II. provides for the registration of pharmaceutical chemists.

Part III. defines the qualification necessary for pharmaceutical chemists.

Ss. 29 and 30 prohibit the use of certain titles or the carrying on of business as chemists by any "persons" other than chemists registered under the Act. The Act, however, appears not to deal with the difficulty long felt in England as to the position of company chemists (see *Pharmaceutical Society* v. *London and Provincial Supply Associ tion, Ltd.* (1880) 5 App. Ca. 857, where it was held that "person" did not include a corporation). This decision has enabled corporations in England to keep chemists' shops and use the title of chemists. By recent legislation (the Poisons and Pharmacy Act, 1908) a corporation may not use the title of chemist unless in each of its shops a qualified chemist is employed and unless there is a qualified chemist on its Board of Directors.

Sunday Observance (No. 36).—No sales are to be made, or business or work, other than work of necessity or mercy, is to be done on Sunday (s. 6).

Public games or contests for gain and performances at which any fee is charged are declared illegal by s. 7.

Service of process on Sunday, which has in England been void since the Sunday Observance Act of 1677, is declared to be void by s. 10.

The Closer Settlement Amendment Act (No. 37) gives to the Minister further powers of issuing leases for allotments.

Bills of Sale Amendment (No. 38).—Debentures issued by any incorporated company are exempted from the operation of the Bills of Sale Act, 1900.

Licensing Act, 1908.—No. 39 is a long and important enactment consisting of six parts and sixty-eight sections. It is incorporated with the principal Act of 1902, and amends the law relating to licences for the sale of liquor.

Ss. 4-5 deal with definitions. A person is not to be deemed a *bonâ fide* traveller unless he has travelled at least four miles. This distance is considerably less than that required in Victoria, where it is ten miles (54 Vict. No. 1111, s. 135 (Vict.)), or in New South Wales, where it is ten and in some cases twenty miles (62 Vict. No. 18, s. 64).

Part II. amends the principal Act. It is an offence under s. 14 for a licensee to use on any bottle or vessel any false sign or label which might mislead a customer as to the nature or quality of its contents.

Part III. (ss. 16-20) provides for the granting by a police magistrate or two justices of occasional licences for public events.

Part IV. imposes certain duties on licensed persons.

S. 22 reproduces s. 7 of the English Act of 1902, and penalises the aiding of drunkards to get liquor.

S. 23 makes any person found drinking liquor on licensed premises during prohibited time liable to a fine of five pounds.

S. 24 provides that where proceedings are taken against a licensee for supplying liquor to a person during prohibited hours and the licensee is unable to prove that the person to whom the liquor was sold was a traveller, the court shall nevertheless dismiss the charge if satisfied that the licensee believed the purchaser to be a traveller.

Ss. 31, 32 follow previous legislation in New South Wales (the Liquor Amendment Act of 1905, s. 10), and provide that persons under eighteen years of age shall not be allowed inside a bar, and that no person under the age of sixteen shall be sent to licensed premises to obtain liquor.

Since September 1, 1908, no female, other than the wife, daughter, or sister of the licensee, has been allowed to be engaged to serve in a bar on licensed premises in Tasmania (s. 33).

The supply of liquor to half-castes is prohibited by s. 34.

Ss. 35 and 36 give certain powers with regard to licensed premises to the police; sanitary provisions are contained in s. 37.

Betting in licensed premises is an offence under s. 38.

Part V., which does not come into operation until January 1, 1917, establishes the local option vote.

S. 40 provides for the constitution of a licensing bench in every district.

The number of licences is not to exceed the present number (s. 41), though an increase in the number of licences may be allowed on the ground of increase of population, where a petition is presented to the Governor,

signed by a majority of the electors living within a one-mile area of the premises for which a licence is desired (s. 42).

A local option vote is to be taken in every district once in three years, and is to be given effect to by the licensing benches (s. 43). Two resolutions are to be submitted to the vote of the electors (s. 44):

(i) That the number of licences existing in the district continue;

(ii) That the number be reduced.

If the latter resolution is carried, the number of exisiting licences may be reduced by one-fourth (s. 46).

In enforcing a resolution the determination of the licensing bench is final, except on a point of law, in which case appeal lies to the Supreme Court (s. 48). The bench shall determine the reduction to be made in the number of existing licences when a resolution requiring a reduction has been carried (s. 49).

In reducing the number of licences the bench are, subject to the consideration of the convenience of the public and the requirements of the several localities in the district, to deal first with licensed premises with respect to which there have been within the three years preceding the taking of the vote convictions for certain offences mentioned in the section (s. 49).

S. 50 contains provisions applicable as between lessor and lessee where a licence ceases to be in force by reason of the exercise of a local option.

Part VI.—Ss. 54-64 deal with evidence.

Evidence that a person was apparently above a certain age is a sufficient defence in a prosecution under the Licensing Acts relating to persons of a specified age (s. 54).

Delivery of liquor to any person is *primâ-facie* evidence of sale thereof, in the absence of satisfactory evidence to the contrary (s. 55).

Any sale by the wife or servant of a licensee shall be considered presumptively as the act of the licensee (s. 59).

Convictions and orders are not to be impeached for want of form (s. 64).

Boundary Fences (No. 40).—This enactment provides for the fencing off of adjacent properties. Any owner of land whose property is not sufficiently divided from his neighbour's may compel the owner of the adjacent land to join in or contribute towards the expense of erecting a fence. The cost of fencing is to be shared by the two owners, the amount to be paid by each being, in cases where the parties cannot agree, settled by arbitration.

Owners of adjoining land are liable to the cost of repairing fences in equal proportion (s. 22).

All disputes under the Act are to be settled by arbitration.

Gold Act (No. 41).—This is a most stringent measure regulating the buying of gold. It embraces many of the provisions of the Gold-buyers Act, 1907 (Victoria), and renders it more difficult to dispose of gold unlawfully obtained.

Gold-buyers and gold-assayers must be licensed, and no persons (except bankers) may be both gold-buyers and gold-assayers (s. 4).

Ss. 7-19 deal with applications for, renewals of, and revocation of licences.

Every gold-buyer or gold-assayer must, under s. 21 of the Act, keep a Gold Register Book, and every licensed person (other than a bank) must personally conduct the business of buying or assaying of gold.

S. 22 imposes various obligations upon licensees:

(*a*) The name and description of the business of a licensee must be displayed on his business premises.

(*b*) Books must be kept showing the amount of gold received and the manner in which it was disposed of.

(*c*) Buyers and sellers are to enter and leave only by front door.

(*d*) A dealer is obliged to inform the police of any gold coming into his possession which answers the description of any gold supposed to have been stolen.

(*e*) The form of any gold purchased or received is not to be changed for five days.

No. 42 provides for the reinstatement as purchasers of Crown lands of certain persons whose lands had been forfeited.

Certain persons are permitted to complete purchases of land, and the Act further provides that the purchase-money may be applied wholly towards payments for the portion of land selected.

Mining Act Amendment.—No. 51 amends at length the Mining Act, 1905. S. 20 repeals s. 181 of the principal Act, and imposes certain duties upon the manager of a mine in which an accident has occurred. In cases where serious personal injury has been caused by any explosion or by any such special cause as the Minister for Mines specifies, the manager is under an obligation to at once communicate with the nearest inspector of mines. The place of accident or explosion causing loss of life or serious personal injury is to be left undisturbed until it has been inspected by a coroner's jury or by an inspector of mines, or until three days have elapsed since notice was given to the inspector.

S. 23 prohibits employment of labour, other than in works of necessity and mercy, on Sunday.

Presbyterian Church Amendment.—This, a private Act, creates the trustees of the property of the Presbyterian Church in Tasmania a body corporate.

Supplementary List.

The following are Acts of a formal nature:

Supply (No. 1).
Appropriation (No. 7).
Appropriation (No. 8).
Supplementary Appropriation (No. 20).
Inscription Stock and Treasury Bills (No. 25).
Inscription Stock and Treasury Bills (No. 29).
Supplementary Appropriation (No. 44).

5. VICTORIA.

[*Contributed by* C. J. Zichy-Woinarski *and* W. Harrison Moore, Esqs.]

Acts passed—18.

The Municipalities American Fleet Celebration Act, 1908 (No. 2141).—This long title covers a very short Act whose purpose was to enable the municipal council of any municipality in Victoria to spend out of the municipal or loan fund any sums of money to be approved by the council in the welcome to the Fleet of the United States of America. The amount to be spent was by the Act to be left to the discretion of each municipal council, and was authorised in advance. In 1901 a similar Act had been passed in connection with the visit of H.R.H. the Prince of Wales; though in the latter case validating the expenditure after it had been made.

The Government Statist Act, 1908 (No. 2148).—In the year 1896 some of the powers and duties of the Government Statist were transferred to a new officer, the Actuary for Friendly Societies, and after the Commonwealth was founded other powers and duties of the Statist passed to the Commonwealth Statist, though the position of Government Statist still remained. A recent appointment of the Government Statist to another office in the State service offered an opportunity to the State to combine the office of Actuary for Friendly Societies with that of Government Statist, and so effect an economy in salary. This new Act effects that purpose. In s. 3 the qualification of Government Statist is given—he must have passed the final examination of the Institute of Actuaries of Great Britain and Ireland, or of the Faculty of Actuaries of Scotland, or examinations of an equivalent standard set and examined by the University of Melbourne. His official status is to be that of the head of the Government Statists' branch in the Department of the Chief Secretary (s. 4).

In all Acts and Regulations where reference is made to the Government Statist or the Actuary for Friendly Societies, the Government Statist appointed under this Act is to be the person meant (s. 5).

This last section (6) provides for the powers of an Acting or Assistant Government Statist.

The Income Tax Act, 1908 (No. 2151), declares the rate of duties of income tax for the year 1909, which are the same as for the year 1908, as declared by the Income Tax Act, 1907, No. 2090.

The Administration and Probate Duties Act, 1908.—No. 2152 continues for a further period of twelve months (the period between the 31st day of December, 1908, and the 1st day of January, 1910) the existing rates of probate duty which since 1903 have remained practically unaltered by legislation.

The Stamps Act, 1908.—No. 2153 amends the principal Act of 1890

by remitting the stamp duty hitherto payable in Victoria under the principal Act on any bills of exchange drawn in Victoria and payable at any place beyond the limits of the Commonwealth of Australia. The duty was two shillings *per cent.*, and as New South Wales had remitted the stamp duty on bills of exchange drawn in New South Wales and payable at any place beyond the Commonwealth of Australia, it was felt necessary in Victoria to put the trading interests in Victoria on an equality with those in the sister State. The Act also remits the stamp duty hitherto payable in Victoria on bills of exchange payable in Victoria and drawn at any place beyond the limits of the Commonwealth of Australia, and on bills of exchange drawn in Victoria and payable in any other State of the Commonwealth of Australia, and on bills of exchange drawn in any State of the Commonwealth of Australia except Victoria and payable in Victoria.

The Married Women's Property Act, 1908.—No. 2154 consists practically of one clause, and provides that the husband of a woman shall not be liable for any tort committed by her after her marriage, which is not a sufficient cause of action at law against him alone.

The Fences Act, 1908 (No. 2155).—This is an Act aimed at the great pest to agriculturists—the rabbit. About 14,000,000 rabbits are annually exported from Victoria, greater numbers are poisoned or destroyed, and yet the rabbit holds his own, and it is estimated that the grass lost through the rabbits is sufficient to maintain 800,000 dairy cows or 6,000,000 sheep. The Chief Inspector for the Suppression of Vermin is empowered (by s. 4) upon personal inspection or upon report by an inspector to certify that a vermin-proof fence is required, and thereupon each of the occupiers of the adjoining land are made liable to contribute to the cost of constructing a vermin-proof fence; and where one such occupier desires to compel another to contribute to the cost thereof, a notice to fence must be given, specifying the kind of fence to be erected, and a Court of Petty Sessions may award the kind of fence to be constructed and make the necessary orders for contribution. The Minister of Lands may negative the certificate of the Chief Inspector.

Certain kinds of fences are declared to be vermin-proof fences (s. 2), and the Governor in Council is given power to declare from time to time any fence described in the order to be a vermin-proof fence within the Act (s. 3).

Under the principal Act—the Fences Act, 1890—the Crown is exempt from the provisions of the law as to the construction of fences, and as there are at least 20,000,000 acres of Crown lands in Victoria, the Crown is made also exempt from the provisions of this present amending Act. But still (by s. 9) where any person constructs a vermin-proof fence on land immediately adjoining unalienated Crown Land, he is made entitled to recover from the person who afterwards becomes the first occupier of the adjoining land one-half of the then actual value of the vermin-proof fence,

and failing any agreement being arrived at as to such value, a Court of Petty Sessions is given jurisdiction to determine the matter.

Where a person served with a notice to contribute to the construction of a vermin-proof fence or to the repair or maintenance of an existing one proves to the satisfaction of a Court of Petty Sessions that he is unable to contribute, the Court may order that the person giving the notice may be at liberty to construct the whole of the fence or do the whole of the work required, and thereafter the proportion of the cost remains a charge upon the land that did not contribute until the amount of the proportion is paid, with interest in the meantime at six pounds per cent. per annum (s. 11).

Penalties are provided for the wilful destruction or injury to vermin-proof fences (s. 12).

The Companies' Names Act, 1908 (No. 2156).—A short Act passed in response to a request of the Secretary of State for the Colonies, and which restricts the use by companies of the words "empire" or "imperial." It enacts that no company which includes the word "empire" or the word "imperial" in its name, style, or title shall be registered in Victoria, unless the Governor in Council by order has consented to the use of the word in any particular case.

Factories and Shops (No. 2184).—This Act makes numerous amendments in the Consolidation Act of 1905. The provisions of the law relating to the employment of children are extended in their operation by the raising of the child's age from thirteen to fourteen in the case of boys and fifteen in the case of girls; vested rights are protected by the declaration that this shall not affect "any child lawfully employed in a factory at the time of the passing of this Act." Incidentally the Act reveals the difficulties encountered in administering laws of this class, which are peculiarly liable to evasion: see s. 6. On the other hand, practical convenience requires some concessions. The Act of 1907 having limited the hours of carters and carriers, it became necessary to provide that nothing in that Act shall make it illegal, when the journey has begun within the prescribed hours, to complete the journey to the extent only of taking the cart into a yard, but the goods are not to be unloaded until next day (s. 12). Shops are not to be overcrowded to the extent of being dangerous or injurious to employees or customers; and the Governor in Council may prescribe proper means of ingress and egress and appliances for the prevention and extinction of fire (s. 7).

By s. 8 shopkeepers (other than pharmaceutical chemists) may not take any premium from persons employed in connection with the selling of goods as apprentices or improvers. By s. 14 certain additional Special Boards (*i.e.* Wages Boards) may be appointed in the iron-working trades.

Saturday Half-holiday (No. 2177).—This Act gives effect to a widespread demand for a "universal Saturday." It is not quite universal, however, for it applies only within the metropolitan district, and is limited to those places

of business which under earlier legislation had to be closed at one o'clock on some day in the week, and of these, five—flower shops, bicycle shops, hairdressers, butchers, and bakers—are exempted from its immediate operation, but may be brought under it by the Governor in Council. The Saturday half-holiday means closing at one o'clock. As a compensation to the customer and shopkeeper, shops may be kept open until 10 o'clock on Friday night. The Act involves a great change in social customs in the suburbs, and its experimental character is frankly recognised by a provision that it may be suspended after the expiration of one year on petition of "at least fifty more than one-half the number of all the shopkeepers in the metropolitan district under its operation" (s. 4).

Chaff and Stock Food (No. 2183).—This is an Act of twenty-four sections aiming at the prevention of the adulteration of food for stock. "Chaff" in any agreement is deemed to be hay chaff in the absence of any agreement in writing to the contrary; and if it is not, the seller is guilty of an offence and liable to penalties ranging from a maximum of £20 for a first offence to £100 and/or six months' imprisonment for a third or subsequent offence. Every invoice, agreement, circular, or advertisement relating to stock foods must state specifically the ingredients of the food and constitutes a warranty.

There is a curious provision in s. 20 relating to prosecutions. A vendor charged with any offence under the Act may vouch any one whom they charge as the actual offender, and if after the offence has been proved he can show due diligence to enforce the Act, and that the vouchee acted without his knowledge or consent, such vouchee shall be summarily convicted and the vender be exempt from penalty. The Court may order any costs "incidental to the proceeding" to be paid by the person convicted. Moreover, if at the time of discovering an offence "it is made to appear to the satisfaction" of the police officer or officer executing the Act (*a*) that the vendor has used diligence, (*b*) by what person the offence has been committed, and (*c*) that it has been committed without the knowledge, etc., of the vendor, the officer is to proceed against the actual offender without first prosecuting the vendor. There are various administrative provisions in aid of the main purpose of the Act, including power of inspection, and "the Governor in Council may make regulations as to any matters whatsoever, not being contrary to the provisions of this Act, necessary to give effect to this Act." The time of operation of the Act is limited; it will expire on July 1, 1912.

Wire Netting (No. 2181).—The place of this in the economy of the State is indicated by the declaration that it is to be read as one with the Vermin Destruction Acts. The Act enables the Government to grant vermin-proof netting to municipalities on payment of 10 per cent. of its value, the balance (with interest at 4 per cent.) to be repaid in nine equal instalments, and various provisions are added for securing the repayment

of principal and interest, since experience shows that municipalities are not always very satisfactory debtors to the Government. The municipalities in their turn may grant netting to landowners, upon terms for repayment, and in certain cases the advance may be made by the Government direct. To use netting granted under the Act for any purpose other than the fencing of the grantee's land is an offence punishable by a fine of £100 or six months' imprisonment.

The Act contains some interesting provisions relating to the position of mortgagees. The liability of the owner in respect to the advance is a first charge on the land, and he may be required to give a mortgage or other security. Where the land is already mortgaged, no advance of netting shall be made in the first instance without the consent of the mortgagee; but if the consent is withheld, the Chief Inspector for the Suppression of Vermin may certify that in his opinion the advance would increase the value of the security, and thereupon the advance may be made without the consent of the mortgagee and has priority over the earlier incumbrance (s. 11).

1909 (First Session).

Acts passed—33.

Constitution: Adult Suffrage (No. 2185).—After many years' refusal, the Legislative Council at the close of 1908 passed a Bill establishing adult suffrage, to which the Royal Assent was proclaimed on March 31, 1909. The electoral qualification for women is in all cases the same as that for men.

Voting by Post (No. 2160).—The temporary Act of 1900 authorising voting by post is continued until the end of 1909.

University (No. 2174).—This Act makes an appropriation of £4,200 per annum for ten years for the establishment and maintenance in the University of a School of Veterinary Science "for the carrying on and teaching of and the conducting of research in Veterinary Science." The work of the school is to be under the control of a Faculty of which half the members are nominated by the Government. Researches are to be undertaken on behalf of the Government on such terms as may be agreed; and the University is to co-operate with the Department of Agriculture so that (*a*) courses of work in agricultural colleges may be utilised for the practical application of knowledge gained at the University, and (*b*) approved courses of work done at such colleges shall be recognised in the University course. The city of Melbourne co-operates in the establishment of the school by granting a site formerly held by it for a hay, straw, and horse market in the vicinity of the University.

Teachers (No. 2175).—This Act deals in detail with the classification and remuneration of teachers in the State schools.

6. SOUTH AUSTRALIA.[1]

[*Contributed by* A. BUCHANAN, ESQ.]

Acts passed—General (including one reserved from the preceding Session), 28.

Constitution.—Act 959 of 1908 repeals the Constitution Amendment Act, 1901 (reviewed vol. i. p. 271), but re-enacts most of its provisions with slight modification, restoring, however, the number of Ministers to six, with the proviso that not more than four shall at one time be members of the House of Assembly (s. 20). When the House of Assembly expires by effluxion of time, it is to be on the last day of February nearest to the day upon which it would, but for this provision, expire (s. 15), the purpose being to bring about general elections at the time of year most convenient to electors.

Northern Territory.—Act 946 of 1907, reserved from the preceding Session, to which the Royal Assent was proclaimed May 14, 1908, and which is not to come into effect until a day to be fixed by Proclamation, ratified and approved a conditional agreement entered into between the then Governments of the Commonwealth and of South Australia for the surrender by the State to the Commonwealth of that part of the State known as the Northern Territory which lies to the north of the twenty-sixth parallel of south latitude and between the one hundred and twenty-ninth and one hundred and thirty-eighth degrees of east longitude, the Commonwealth to take over the Northern Territory debt, to purchase the Port Augusta Railway from the State, and to construct a transcontinental railway connecting the Port Augusta Railway with Port Darwin, and to have the right to build a railway to the boundary of Western Australia. The agreement has not yet been ratified by the Commonwealth Parliament.

Electoral Code.—Act 971 of 1908, a comprehensive measure of 239 sections and 22 schedules, amends and codifies the electoral laws. Chapter II. treats of administration by means of a returning officer and deputy returning officer for the State and returning officers for the separate districts. Chapter III. provides for the division of districts into sub-districts and the polling places. Chapter IV. makes provision for rolls and for arrangements with the Commonwealth for joint rolls (Part I.), claims, transfers, changes, and alterations of rolls (Part II.), removal of names from rolls (Part III.), and appeals by electors (Part IV.). Chapter V. relates to elections, the writs (Part I.), the nominations (Part II.), absent voters (Part III.), the polling (Part IV.), the scrutiny (Part V.),

[1] The legislation of the year 1908, being that of the third Session of the nineteenth Parliament, and one Act of the preceding Session reserved for the Royal Assent, is here reviewed.

and the return of the writs (Part VI.). Chapter VI. deals with Electoral expenditure by candidates, Chapter VII. with offences and penalties, and Chapter VIII. with disputed returns.

Taxation.—Act 969 of 1908 re-defines with greater precision the "unimproved value of land" (s. 13), "income the produce of property" (s. 5), and "income derived from personal exertion" (s. 6). Interest derived from securities of the State of South Australia is expressly declared exempt from all taxation (s. 5), further machinery is provided for ascertaining the taxable income of Life Assurance (s. 8) and other companies carrying on business in South Australia and also elsewhere (s. 9), and of carriers by sea who are resident out of South Australia (s. 11).

Crown Lands: *Advances to Settlers on Crown Lands.*—Act 960 of 1908 constitutes a Board (s. 3) to administer a fund, consisting of moneys provided by Parliament not exceeding £200,000 and repayments to the Board (s. 11), by making advances up to not exceeding £400 to any one settler upon Crown Lands in proportion to the value of the improvements upon his holding (s. 13) secured by first mortgage (ss. 16 and 17) bearing interest at 5 per cent., repayment spread over twenty-five years, to commence with the sixth year (s. 18).

Irrigation and Reclaimed Lands.—Act 953 of 1908 repeals Part I. of the Crown Lands Amendment Act, 1905, and the whole of the Reclaimed Swamp Lands Trusts Act, 1906 (s. 4). Part II. provides for the resumption and improvement of swamp lands and the proclamation of irrigation areas; Part III. for the management of such areas by the Minister until a Board shall be appointed; Part IV. for the establishment of "Irrigation Boards," to which advances may be made by the Government (Div. I.), the appointment and election of members of the Board and of auditors (Div. II.), the appointment by the Board of officers (Div. III.), the meetings of the Board and conduct of its business (Div. IV.), and its general powers and duties (Div. V.). Part V. provides for loans to lessees out of moneys to be voted by Parliament, repayable with 4 per cent. interest by twenty annual instalments.

Drainage Works.—Act 962 of 1908 makes further general provisions for carrying out drainage works in that part of the State known as the south-east by constituting a Drainage Board of one nominated and four elective members (ss. 18-21), charged with the construction, control, and management of the drainage works (s. 33) to which Government moneys, repayable over twenty years at 5 per cent. interest, may be advanced (s. 34), and which may levy drainage rates varying with the increase of value given to lands by the works (s. 42). Part IV. provides for the construction of approved drains on the petition and at the cost of landholders—the cost being treated as an advance to the landholders benefited (s. 55). An Assessment Board, consisting of five members (two official, one nominated, and two members elected by landholders) (s. 6), is to apportion the cost of drains

amongst the landholders benefited (ss. 57-62) and between landholders and lessees (s. 64).

South-eastern Drainage Scheme.—Act 963 of 1908 provides, subject to a poll of the landholders affected, for the carrying out of a specific scheme under the preceding Act, one-half only of the cost thereof being chargeable to the landholders.

Liquor Trade: *Liquor Licences and Local Option.*—Act 970 of 1908 is an elaborate measure of 234 sections and 25 schedules, consolidating and amending the law relating to the supplying of intoxicating liquors and the exercise of local option with regard thereto. Part II. provides for the proclamation of licensing districts and the appointment of licensing benches. Part III. defines the various classes of licences, and prescribes how they may be granted, renewed, transferred, transmitted, removed, and forfeited. Part IV. defines the rights, duties, and liabilities of licensees and others and offences. Part V. deals with the limitation of the number of licences by means of local option polls, at which all electors (adult suffrage) on the roll for the district are entitled to vote, and provides the machinery to give effect by means of special benches to resolutions carried at such polls for the reduction in the number of licences.

Inebriates.—Act 954 of 1908 repeals the old Act of 1881 (s. 2), gives power to a judge or special magistrate to make an order as to the control of an inebriate for a term not exceeding two years (s. 4) upon the application of the inebriate, a near relative, or a partner, or of a member of the police force acting on the written request of a medical practitioner, relative, or justice (s. 5), upon proof of inebriety and personal inspection (s. 6), but the person affected must be given an opportunity of being heard (s. 7). A person convicted three times within twelve months may be similarly dealt with for a term not exceeding twelve months, which, however, may be from time to time extended, and if unfit to travel, may be treated in a hospital, gaol, or private house under the supervision of the police (s. 8). The expenses of care and management may be fixed by the judge or magistrate, and be ordered to be paid by the inebriate or out of his estate (s. 9). The Supreme Court or a judge may make orders for the management of an inebriate's property as in lunacy (s. 10). Institutions for the reception, control, and treatment of inebriates are to be licensed by the Governor (s. 2). Reports of proceedings under the Act are not to be published without permission (s. 20).

Public Health: *Metropolitan Abattoirs.*—Act 957 of 1908 is a comprehensive measure to provide for all slaughtering within the metropolitan area to be done at public abattoirs. Part I. defines the metropolitan abattoirs area. Part II. provides for the Board to be charged with the execution of the Act (s. 9), to consist of the Mayor of Adelaide, and six representative members appointed by the various local government bodies within the area. Part III. relates to the borrowing powers of the Board, the application of

revenue, and the liability of the constituent local government bodies. Part IV. provides for the erection and regulation of public abattoirs and for compensation to the owners of private abattoirs closed. Part V. empowers the Board to establish markets for stock. Part VI. enables the Board to take compulsorily the lands required for its undertaking. Part VII. provides for future extension of the metropolitan area when found necessary.

Bread.—Act 950 of 1908 amends the Bread Acts of 1891 and 1893, extending the class of persons liable so as to include as well the owner as any person employing another to carry bread of less than standard weight for sale or delivery (s. 3); giving to a person convicted a qualified right over to recover the amount of the penalty from the person who supplied the bread the subject-matter of the prosecution (s. 4); requiring vehicles in which bread is carried for sale or delivery to bear owner's name (s. 5); extending the powers of inspectors to stop persons carrying bread for sale and to purchase samples (s. 6); and making evidence of short weight *primâ-facie* evidence of carriage for sale or delivery and of ownership (s. 7).

Food and Drugs.—Act 968 of 1908 consolidates and amends the law relating to the sale of food and drugs. Part II. provides for the enforcement of the Act by the Central Board of Health on the default of the local authority, upon which the duty is primarily imposed, the appointment of officers, inspectors, and analysts, constitutes a metropolitan country district and enables other country districts to be proclaimed, provides for the election of Country Boards with defined functions and powers, and provides for the appointment by the Governor of an advisory committee of four *ex-officio* members and three nominated members. Part III. deals with description of offences; and Part IV., relating to analysis, consists for the most part of provisions taken from the Imperial Acts of 1875, 1879, and 1899.

Industrial: *Lifts Regulation.*—Act No. 949 of 1908 provides for notification of all lifts (ss. 3, 4), inspection by an inspector (s. 5), who may give directions to prevent accidents or order cessation of working, subject to an appeal to the Engineer-in-Chief or his deputy (s. 6); prohibits the working of lifts by any person under eighteen years of age (s. 7); requires the posting of conspicuous notices when a lift is closed for repairs (s. 8); power is given to make regulations as to the construction, inspection, and working of lifts and prescribing fees (s. 10), the validity of which can be disputed only upon an application to the Supreme Court to quash same (s. 11).

Scaffolding Inspection.—Act 951 of 1908 extends the provision of the principal Act of the preceding year to scaffolding of less than sixteen feet in height (s. 3) and to "gear" (s. 4); requires notice to be given to the inspector of accidents causing loss of life or serious bodily injury (s. 5), whereupon the inspector is to investigate and report to the Minister (s. 6), who, if he thinks fit, may direct a magisterial inquiry as to the cause of the accident (s. 7).

Trade Regulation: *Inflammable Oils.*—Act 958 of 1908, Part II., regulates the keeping of inflammable oils beyond certain specified quantities in registered premises and licensed stores. Part III. provides for the marking of packages. Part IV. prescribes rules to be observed in the conveyance of inflammable oils. Part V. provides for Government control by inspection and analysis; and Part VI. for testing.

Chaff, Hay, and Fruit.—Act 964 of 1908 prohibits the adulteration of chaff (ss. 3-6), prescribes standard weight for the sale of chaff by the bag (ss. 6-7), for chaff and hay fixes the weight of the ton at 2,240 lb. (s. 8) and fixes standard sizes for cases for the sale of fruit (s. 10), enables the use of secondhand bags and cases to be prohibited (s. 12), and provides for the appointment of inspectors (s. 13) with powers of entry and examination (s. 14).

Animals: *Prevention of Cruelty.*—Act 956 of 1908 makes it an offence to ill-treat, neglect to feed, bait, to carry so as to cause pain, to slaughter so as to cause unnecessary pain, or use whilst unfit, any animal, or to connive in any such act, punishable on summary conviction by a fine of £10, with an additional cumulative penalty of £5 a day during continuance in certain cases (s. 4). Power is given to prohibit the use of any animal unfit to work (s. 7). Any constable may, on view of an offence, lay an information, upon which a justice may forthwith issue a warrant for the apprehension of the alleged offender (s. 9); informations and complaints must be laid or made within fourteen days (s. 10); justices may order the destruction of disabled or diseased animals (s. 13). When the driver of a vehicle is charged, the owner must produce his servant; in default, the case may be heard in the absence of the servant, and the owner may be adjudged to pay the penalty and costs in which the servant is convicted, with a right, however, to recover from the servant if the default be shown to be the servant's (s. 16). Apart from ill-treatment, the Act is not to apply to the extermination of pests, to hunting of undomesticated animals, nor to vivisection under certain conditions (s. 18).

7. WESTERN AUSTRALIA.

The review of this legislation will appear next year.

8. PAPUA.

[*Contributed by* W. F. CRAIES, ESQ.]

Ordinances passed—18.[1]

Arms.—Ordinance No. 11 limits to one year the term of a permit to use firearms granted to natives or to persons in the territory who are not of European descent.[2]

Constabulary.—Ordinance No. 5[3] provides for an armed constabulary, and regulates the number, discipline, duties, and protection of the force. S. 17 provides for making up the quota of the force, if not obtained by voluntary enlistment, by compulsory enrolment of male aboriginal natives of sound bodily constitution, who are between seventeen and forty and unmarried.

Immigration.—No. 2 places restriction on immigrants, and provides for removal of prohibited immigrants who have entered Papua. It is an adaptation of the Commonwealth Act of 1901,[4] but does not contain the provisions of that Act (and its amendments) with respect to immigrants under contract.

Land.—Ordinance No. 7 amends the Land Ordinance of 1906.[5] Its chief provisions are the creation of Boards to deal with questions as to waste and vacant land and disputed claims by Papuan natives. Stocking a land with goats is declared not to be a "pastoral improvement."

Mining.—The general mining law of the territory is based on the Queensland Act, 1898.[6] Ordinance No. 4 amends this Act:

(i) by vesting in the Crown all minerals, gems, and precious stones, on or under native land (s. 1);

(ii) by extending the term Crown land so as to include native lands and all unalienated Crown land;

(iii) by providing for compensation to natives who own or occupy land (not alienated by the Crown) for damage done by exercise of mining rights (s. 3). The Ordinance also regulates the mining rights of natives (s. 5) and the labour conditions in the case of the employment of native labourers (s. 6).

Pearl-shell and Bêche-de-Mer.—Ordinance No. 14 amends the Ordinance of 1906[7] with respect to the term and transfer of licences to buy pearl-shell (ss. 1-3), and provides for special permits to fish for bêche-de-mer in certain prohibited waters (ss. 4, 5).

[1] Of these, Nos. 6, 8, 9, 10, 12, 17, and 18 are Appropriation Ordinances. Certain of the Ordinances were reserved for the assent of the Governor-General, which was given.

[2] Definition applied from Ordinance No. 1 of 1888.

[3] It repeals Ordinance No. 12 of 1907. See Journal, N.S. vol. ix. p. 431 *n.*

[4] See Journal, N.S. vol. iv. p. 259.

[5] Journal, N.S. vol. viii. p. 338.

[6] Adopted in 1899. Journal, N.S. vol. ii. p. 581.

[7] Journal, N.S. vol. viii. p. 337.

Shipping.—Ordinance No. 3 provides for the fixing and imposition of harbour dues and wharfage rates to be levied on ships visiting ports named by proclamation. The wharfage charges are leviable only when the wharves have been erected at the public expense for the convenience of shipping.[1]

Ordinance No. 13 provides for the constitution of a Marine Board for Papua. Its powers, duties, and jurisdiction are defined by reference to Part I. of the adopted Queensland Act, 41 Vict. No. 3.

Timber.—Ordinance No. 16[2] makes permits necessary for cutting timber growing or standing on Crown land or native-owned land, for sale or export, or for use in erecting buildings under a contract, or for sale or lease, or for any commercial purpose, except the supply of firewood for domestic use.

It also provides for a royalty on all exported timber (s. 3), and for the approval of contracts with aboriginals in respect of indigenous timber (s. 2).

Ordinance No. 1[3] empowers the Governor to purchase from natives the right to fell and remove timber from native-owned lands (s. 2), and makes a permit necessary to authorise the cutting of timber by non-natives on Crown lands or native-owned lands (if it is to be converted into sawn timber—except with hand-saws—or is cut for sale or export), and to authorise the purchase from natives for the above purposes of timber cut by them on native-owned lands (ss. 3, 5). It also provides for branding timber cut under permit (s. 6).

Wild Birds.—Ordinance No. 15 provides for the protection of birds of paradise, ospreys, and goura pigeons, by prohibiting their capture or wilful destruction, and the sale, purchase or exportation of their skins or plumage. The Governor may by proclamation add other birds to the schedule. Written permission may be given by a magistrate to kill prohibited birds if they are seriously injuring the property of the person seeking the permission (s. 6), and special permits to destroy or capture prohibited birds may be issued by the Lieutenant-Governor to accredited agents of museums, zoological societies, or scientific institutions (s. 7).[4]

Supplementary Complete List of Ordinances Passed.

No. 1. Indigenous Timber.
No. 2. Immigration Restriction.
No. 3. Port Dues Revision.
No. 4. Mining.
No. 5. Constabulary.
Nos. 6, 8, 9, 10, 12, 17 and 18. Appropriation Ordinances.

[1] The Ordinance supersedes the adopted Queensland Port Dues Act of 1882.
[2] It amends Ordinances of 1892 and 1907. Journal, N.S. vol. ix. p. 433.
[3] It amends Ordinances of 1892 and 1903. Journal, N.S. vol. vi. p. 381.
[4] The Ordinance repeals the Wild Birds Protection Ordinances of 1894 and 1905.

No. 7. Land.
No. 11. Arms Restriction.
No. 13. Marine Board.
No. 14. Pearl-shell and Bêche-de-Mer.
No. 15. Wild Birds.
No. 16. Timber.

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—15.

Customs.—Ordinances Nos. 1 and 6 amend the Customs Ordinances of the Colony [1]:

(*a*) as to duties on drapery, flour, and kerosene;

(*b*) as to the procedure for the collection of customs.

Bread.—No. 9 requires that bread be sold by weight in 2 lb. or 4 lb. loaves, except French or fancy bread or rolls.[2]

Immigration.—Ordinance No. 4 amends the Indian Immigration Ordinance, 1891, by treating Indian immigrants after the end of 1908 as adult at 15 (s. 5), and by providing that all adult Indian immigrants, unless unfit for labour, are on arrival in the Colony to be allotted to a plantation and to be deemed to be indentured to serve on the plantation for not more than five years (s. 2). Certificates of indenture are drawn up and must be signed by the employer (s. 2).

Licensing.—Ordinance No. 5 authorises the issue and enforcement of proclamations prescribing areas within the Colony within which the issue of wholesale wine and spirit licences shall be prohibited.

Mines.—Ordinance No. 13 amends the law of the Colony as to prospecting and mining for metals and other minerals.

No one may prospect for precious metals, coal, or other minerals without a miner's right or prospecting licence.

A miner's right entitles the holder to prospect for precious metals, coal, or minerals on any land in the Colony not included in a prospecting licence. But on private land prospecting may be only for precious metals (s. 4).

A prospecting licence gives an exclusive right to prospect for precious metals, coal, and minerals on the land to which it refers (s. 5).

Certain lands are excepted from prospecting—native villages, lands occupied by buildings, and lands under crop (s. 7).

Where mines are discovered by prospectors, mining areas may be proclaimed, and the land within the area, other than unoccupied Crown land, must be resumed (s. 17); and no mining may be carried on without a mining lease (ss. 18, 19).

[1] Ordinance No. 7 of 1881, and Ordinance No. 8 of 1907. Journal, N.S. vol. ix. p. 43.

[2] An adaptation of 6 & 7 Will. IV. c. 37, s. 4 (Imp.).

Shipping.—Ordinance No. 10 amends the Wharfage Ordinance, 1882.[1]

It provides for levying tonnage dues at the scheduled rate on all vessels of over 2 tons' measurement discharging or taking in cargo at a Government wharf (ss. 5-8). But the dues are not leviable on vessels coming from beyond the Colony to get coal, water, or ship's stores (s. 9).

Provision is also made for levying wharfage dues:

(i) On all goods (other than passengers' luggage) imported from beyond the Colony, which goods must be landed at a Government wharf (s. 11 (1)).

(ii) On Fiji produce actually passed over the Government wharf (s. 13).

In the case of imported goods over-carried or landed for transhipment, there are certain conditional exemptions (s. 11 (2) (3)).

Ordinance No. 11 extends to ships registered in Fiji, while within the jurisdiction of the Fijian Government, the discipline clauses (ss. 220-38) of the Imperial Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).[2]

Ordinance No. 12 provides that the Marine Board of Fiji shall examine, certify, and license pilots for pilotage within Fiji waters. It also deals with the duties and liabilities, civil and criminal, of pilots, and provides for recovery of pilotage fees in a summary manner.

Trespass.—Ordinance No. 14 amends the Trespass and Branding Ordinance, 1883, by providing for ear-marking of sheep and goats.

Supreme Court.—Ordinance No. 15 amends the Supreme Court Ordinance, 1875, by adding new clauses defining the constitution of the Court (5), regulating the sittings of the Court at Suva for civil and criminal business (28), and (29) regulating the time, place, and manner of holding circuit courts for criminal causes.

Supplementary Complete List of Ordinances.

No. 1. Customs.
No. 2. Legalises payments in excess of expenditure authorised for 1907.
No. 3. Albert Park, Suva.
No. 4. Indian Immigration Amendment.
No. 5. Licensing.
No. 6. Customs.
No. 7. Wharfage, repealed by No. 10.
No. 8. Bread.
No. 9. Appropriation.
No. 10. Wharfage.
No. 11. Merchant Shipping.
No. 12. Pilots.
No. 13. Mining.
No. 14. Trespass and Branding.
No. 15. Supreme Court and Criminal Procedure.

[1] It also repeals another Ordinance, No. 7 of 1908. [2] See s. 261 of the Act of 1894.

10. THE DOMINION OF NEW ZEALAND.

[*Contributed by* GODFREY R. BENSON, ESQ.]

Public and General Acts 54; Local and Personal Acts, 45.

Consolidated Statutes Enactment (No. 4).—The Commissioners appointed under the Reprint of Statutes Act, 1895, having prepared a revised and consolidated edition of the Statutes of New Zealand (omitting those of an annual, occasional, local, or personal nature), this Act gives the force of law to the consolidated Acts, numbering 208, set out in a Schedule to it, and effects the consequential repeals.

The subsequent Acts of 1908 are accordingly numbered from 209 onwards.

Local Authorities Indemnity.—No. 209.

New Zealand Society of Accountants (No. 211).—This Act sets up a statutory body to provide for the training, examination, and certification of accountants.

Incorporated Societies (No. 212).—This Act provides for the incorporation, registration, dissolution, etc., of societies not established for the purpose of pecuniary gain.

Coroners Amendment (No. 213).—This Act enables coroners (but not persons acting as their deputies) to hold inquests, where they think fit and are not directed otherwise by the Attorney-General, without a jury.

Town Boards Amendment.—Nos. 214 and 215.

Local Elections and Polls Amendment.—No. 216.

Civil Service Amendment (No. 217).—This Act relaxes certain provisions of the Civil Service Act, 1908 (one of the consolidated Acts mentioned above), in the case of the appointment of persons with expert knowledge specially required in their office, in the case of workmen and artisans, and in certain other special cases.

Taupo (No. 2) Block.—No. 218.

Destitute Persons Act Amendment (No. 219).—This Act enables grandparents and grandchildren of destitute persons to claim exemption from a demand to maintain the destitute persons to the extent to which other near relatives of the destitute persons can be shown to be able to maintain them.

Declaratory Judgments (No. 220).—This Act provides for the decision by the Supreme Court, upon originating summons, of any question of the construction of a Statute or any other instrument, though no actual claim for relief is before the Court, and with reference to a state of facts which has not yet arisen.

Wellington and Manawatu Railway Purchase.—No. 221.

Impounding Amendment.—No. 223.

Inspection of Machinery Amendment.—No. 224.

Naval Subsidy (No. 225).—This Act grants a subsidy of £100,000 a year to the Imperial Government in aid of the maintenance of the Royal Navy.

Second Ballot (No. 226).—This Act provides for a second ballot whenever in a Parliamentary election no candidate has received an absolute majority of the votes cast.

Harbours Amendment.—No. 227.

Justices of the Peace Amendment (No. 228).—This Act extends the power of the Supreme Court to deal with habitual offenders to a case unintentionally excluded before.

Government Advances to Settlers Amendment (No. 229).—This Act, *inter alia*, increases the total amount which the Government may advance to settlers.

Immigration Restriction Amendment (No. 230).—This Act exempts from the prohibition of immigration Chinese who, having been duly registered in New Zealand, return there within four years of leaving it.

Local Bodies Loans Amendment.—No. 231.

Counties Amendment.—No. 232.

Infants Amendment.—No. 233.

Defence Amendment (No. 234).—This Act strengthens the power of the Council of Defence to dismiss from the service any private in the Volunteers and the power of the district commanding officer to disrate any non-commissioned officer.

Education Reserves Leases Validation and Empowering.—No. 235.

Monopoly Prevention Amendment.—No. 236.

Railways Authorisation.—No. 237.

Education Amendment (No. 238).—This Act revises the classification of public schools, the provisions as to the numbers of teachers, and the scale of teachers' salaries.

Industrial Conciliation and Arbitration Amendment (No. 239).—This Act imposes penalties on persons who take part in, or instigate, or in any way aid or abet strikes or lock-outs on the part of workers or employers who are subject to any award or industrial agreement; it requires fourteen days' notice of a strike or lock-out in certain occupations of which the regular continuance is of special moment to the public; it provides for the suspension of the registration of any union or industrial association which has promoted a strike or lock-out in contravention of the preceding provisions. It also abolishes the previously existing Boards of Conciliation and substitutes for them Conciliation Commissioners, appointed by the Governor, acting in each case with assessors, who are specially nominated by the parties, and who are themselves engaged in the industry concerned.

Public Bodies' Leases (No. 240).—This is a consolidating and amending Act.

Public Works Amendment (No. 241).—This Act, *inter alia*, provides for

the granting by Order-in-Council of licences to use water from rivers, etc., for generating electricity, such Orders-in-Council to confer any necessary powers of taking land.

Acts Interpretation Amendment.—No. 242.

Fire Brigade Amendment.—No. 243.

Local Authorities Superannuation (No. 244).—This Act authorises the establishment of superannuation funds for employees of local authorities.

Old Age Pensions Amendment.—No. 245.

Valuation of Land Amendment.—No. 246.

Quackery Prevention (No. 247).—This Act imposes penalties upon the persons concerned in publishing statements intended to promote the sale of a medicine, or the like article, which statements are "false in any material particular relating to the ingredients, composition, structure, nature, or operation of that article, or to the effects which have followed, or may follow the use thereof." Prosecutions can only be instituted by the Chief Health Officer acting with the consent of the Attorney-General, and printers, publishers, or proprietors of newspapers are only liable to prosecution if they have offended after warning from the Chief Health Officer.

Supply.—No. 1, 3, 210, and 222 are Supply Acts.

Aid to Public Works and Land Settlement (No. 2).—This Act authorises the raising on loan of £1,250,000, of which nearly half is for the development of the gold-fields and most of the remainder for railway extensions and equipments.

Workers' Compensation (No. 248).—This is mainly a consolidation Act.

Local Drainage Amendment.—No. 249.

Public Service Classification and Superannuation Amendment.—No. 250.

Coal Mines Amendment.—No. 251.

Land-Tax and Income-Tax.—No. 252.

Maori Land Laws Amendment (No. 253).

Fisheries Amendment (No. 254).—This Act is to authorise licences to Maoris, to catch trout for their own use in certain streams.

Stamp Duties Amendment.—No. 255.

Validation Court Empowering.—No. 256.

Mental Hospitals Reserves.—No. 257.

Appropriation.—No. 258.

V. SOUTH AFRICA.

1. CAPE COLONY.

The review of the legislation of 1908 has already appeared. See Journal No. XX.

2. NATAL.

[*Contributed by the* ATTORNEY-GENERAL.]

Native Labour.—No. 1, "To amend the Touts Act, 1901." This Act removes the prohibition against taking native labour out of Natal, and provides for recruiting under special licences for natives to be employed outside the Colony. The principal object of such recruiting is to supply labourers for the mines in the Transvaal.

Act of Indemnity.—No. 5, "The Indemnity Act, 1908," indemnifies the Governor and others who acted under martial law in the restoration of order in Zululand and the Northern Districts. The Act follows the form of previous Acts of Indemnity.

Customs (No. 6).—This Act amends in certain details the Customs Union and Customs Duties Act of 1906, being passed in pursuance of a protocol signed by the several Colonies which are parties to the Union. Its provisions will to a large extent become inoperative upon the union of the South African Colonies.

No. 13 increases the limit of wharf dues on articles imported for home consumption from 10*s.* to £1 per £100 value.

Special Court (No. 8).—This Act establishes the Commission Court by which Dinuzulu and certain other natives were tried for treason and murder. It expired and the Court was dissolved in May 1909.

Quit Rents.—No. 14 remits overdue quit rents in the Northern Districts up to the date of annexation (January 27, 1903), and authorises any such quit rents already paid to the Natal Government for periods before that date to be credited against future quit rents.

Public Works.—No. 17, the Public Works Loan Act, 1908, authorises a loan of £500,000 for the construction of railways and harbour works, and other public works of a permanent nature.

Firearms and Ammunition (No. 19).—Authorises the private importation of ammunition under permits from the Controller of Arms. Hitherto ammunition has only been imported by the Government, and disposed of through licensed dealers.

Sale of Native Beer (No. 23).—Under the laws of Natal natives are prohibited from obtaining spirits or intoxicating liquors other than the com-

paratively light kind of beer made from maize or millet, and known as utshwala or native beer. No restrictions are imposed upon the private consumption of native beer at native kraals, or country homesteads, and it is only when it is supplied in the course of trade or within towns, or when large gatherings take place for the express purpose of beer-drinking, that it becomes necessary to impose restrictions to prevent excesses and resulting crime.

The Act deals first with the supply of native beer, as a matter of trade, in villages or elsewhere outside boroughs and towns. This will be permitted only under licences granted in the sole discretion of the Department of Native Affairs, which will hold a strict control over licence-holders.

Zones may be defined round any borough, town, or village within which beer-drinking assemblies will not be allowed without the express permission of a magistrate.

As regards boroughs and towns, two systems are sanctioned, the choice of which is in the discretion of the township authorities, viz. sale by licence granted by the town council or local board, and under strict control, and sale by the township authorities themselves, the proceeds being expended for the benefit of the natives belonging to the boroughs or towns.

Angora Goats.—No. 29 prohibits the export of Angora goats. It forms a part of a general scheme adopted by the South African Colonies.

Fencing Farms.—No. 32 gives to local committees, which were formerly merely advisory bodies, considerable powers for compelling the fencing of farms and dealing with other matters in which the central Government alone had authority. Provision is made for preventing, as far as circumstances permit, the hardship created by the removal of tenants at the expiry of their leases when it may not be possible for them to take their cattle with them.

The principle of local option is introduced in regard to compulsory dipping or cleansing of cattle in the different magisterial divisions.

Income and Land Assessment.—No. 33 introduces both income and land tax. Without entering into the details of a necessarily long and complex Act it may be mentioned that income tax is payable upon all incomes derived from sources within the Colony, irrespective of the residence of the payer, and upon all incomes of persons resident within the Colony, irrespective of the sources of their incomes. There are certain exemptions, as in the case of the Governor, imperial officers, consuls and the like, and persons residing abroad as regards dividends upon colonial Government or municipal debentures, stock, or securities. Certain other incomes are exempted on account of their nature, such as town councils, public, charitable, religious and educational institutions.

The income tax is assessed upon incomes up to June 30 preceding the assessment.

Special provision is made (for which reference may be had to ss. 20 to 23)

for the case of foreign shipowners, submarine telegraph companies, goods sent to the Colony for sale upon consignment or commission, insurance companies and other companies whose business extends to other countries.

The land tax applies only to lands outside boroughs and townships.

Ss. 31 to 34 imposes special taxes upon lands not beneficially occupied and upon lands owned by "absentees."

No. 34 fixes the rates of income and land tax. It is an annual Act.

Probation of Offenders.—No. 36 empowers the Courts in certain cases to discharge offenders upon recognisances for good behaviour, or to suspend sentence upon the accused entering into a recognisance to appear to receive sentence when called upon.

Power is given to appoint probation officers, but hitherto none such have been appointed.

Protection of European Children.—No. 37 forbids the disposal of European children to others than Europeans.

Protection of Life Policies.—No. 38 protects life policies, up to certain limits varying with the age of the policy, from attachment or sequestration. Policies effected by married women are excluded from the community of property which by Roman-Dutch law attaches to the property of husband and wife, and further provision is made for insuring the benefit of policies to widows and families, up to the prescribed limits, as against the claims of creditors of the assured. Similar protection is given in regard to payment due upon the death of members of friendly societies and the like.

Usury.—No. 41 is intended to protect natives from usurious interest upon loans and other money transactions. No judgment is to be given upon any claim for a loan unless the agreement has been reduced to writing before a magistrate or justice of the peace after a full explanation has been given to the native, nor may a native be adjudged to pay more than 15 per cent. upon any loan, the right being given to him to sue for the recovery of anything paid in excess. The Courts are required to investigate all claims brought under agreements or other securities for loans in order to satisfy themselves that the documents represent the true transaction.

The Act also fixes a limit of 8 per cent. upon the purchase price under any sale to a native, and prohibits landlords from charging interest or fine upon outstanding rent due by natives.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D., *Lecturer in Roman-Dutch Law to the Council of Legal Education.*]

Letters Patent, 1907, Acts 1—42.
(Printed in English and Dutch.)

Constitution.—*Letters Patent.*—The Statute Book of 1908 commences with the Letters Patent which were granted to the Orange River Colony on June 5, 1907, and provide for the establishment of responsible Government for the Orange River Colony.

These Letters Patent are the same as those granted on December 6, 1906, to the Transvaal (Journal, N.S. vol.ix. Part II. p. 465), with small modifications, *e.g.* that members of the Legislative Council in the Orange River Colony shall vacate their seats in three consecutive years, so that only a third part of the total number shall seek re-election each year; or that in the Transvaal provisions are made for a biennial registration of voters, and that the Transvaal Letters Patent contain provisions to regulate the importation of labour.

Powers and Privileges of Parliament.—No. 1 defines the immunities and powers of the Legislative Council and Legislative Assembly of the Orange River Colony, or either of them, and secures freedom of speech and debate or proceedings in Parliament and gives summary protection to persons employed in the publication of parliamentary papers. Similar to Transvaal Act No. 3 of 1907 (Journal, N.S. vol. ix. Part II. p. 467).

Colonial Secretary.—No. 2 gives power to the Governor by Proclamation to direct that certain statutory duties of the Colonial Secretary may be performed by the Under-Colonial Secretary or by some other officer to be determined by him.

No. 18 fixes the salary of the President of the Council and the Speaker of the Legislative Council.

No. 21 amends the provision of the Constitutional Letters Patent, 1907, relating to the payment of members of the Legislature.

No. 22 establishes new electoral divisions for the districts of Fauresmith and Jacobsdal in the place of the electoral divisions as at present defined and amends the Orange River Colony Letters Patent to that effect.

No. 41 provides for the care, custody, and inspection of documents deposited with Parliament for the purpose of Private Bills to be introduced therein; and provides further for the taxation of costs incurred in the promotion of or opposition to such Bills.

Agent-General.—No. 25 grants powers to the Governor from time to time to appoint an Agent-General of the Orange River Colony in the United

Kingdom for a period not exceeding five years, and for the performance of such duties as may be from time to time assigned to him by the Governor.

Finance.—*Auditor-General.*—No. 17 provides for the appointment and tenure of office of the Auditor-General and defines his powers and duties.

The Act regulates at the same time the receipt, custody, and issue of public moneys, and provides for the audit of the public accounts of the Orange River Colony.

No. 3 applies a sum not exceeding £200,000 on account towards the service of the year ending June 30, 1909.

No. 11 provides out of Treasury balances for the year ending June 30, 1908, for extraordinary expenditure on certain work and services.

No. 16 provides for the assumption by the Orange River Colony of £7,750,000 in respect of the Transvaal guarantee loan 1903 of £35,000,000 and of certain ascertained additional liability. The proportionate share of the Transvaal guarantee loan shall be a charge on the general revenue and assets of the Colony.

No. 27 provides for a sum not exceeding £18,994 for the service of the year ending June 30, 1908.

No. 28 provides a sum not exceeding £985,801 for the public service of the Colony for the year ending June 30, 1908.

No. 40 authorises the Governor to raise a loan of £1,500,000 to be appropriated and applied for the purpose set out in the Schedule of this Act.

Administration of Justice.—*Trustees.*—No. 4 provides for the recognition in the Orange River Colony of trustees and liquidators appointed in other parts of his Majesty's dominions.

Criminal Law.—No. 8 provides for the punishment of acts of extortion either by compelling the execution of documents or demanding property with threats and intent to steal, or by letters using threats, or by letters threatening to accuse, or accusing of a crime with intent to obtain money, or by publishing or threatening to publish defamatory matter with intent to extort money.

The punishment on conviction is imprisonment with hard labour for periods not exceeding from seven to twenty years.

No. 10 imposes penalties by fines and imprisonment for the winning of money by cheating or gambling, or wagering, or by persuading others to join in fraudulent or illegal gambling on railways or public vehicles.

Field Cornets.—No. 20 provides for the appointment of, and determines the powers, jurisdiction, and duties of Field Cornets, and consolidates in that respect all the powers and duties conferred and imposed upon Field Cornets by and to the extent set forth in the laws enumerated in Schedule B of the Act.

Resident Magistrates.—No. 33 amends the law relating to resident magistrates and assistant resident magistrates, confers additional powers

on these magistrates, and legalises certain notarial deeds passed previously to the Act before assistant resident magistrates.

No. 34 amends the Petty Debts Recovery Ordinance, No. 2 of 1906 (Journal, N.S. vol. viii. Part II. p. 355).

Police.—No. 36 provides for the establishment, organisation, and control of the Orange River Colony Police.

No. 39 amends the law relating to advocates, attorneys, and medical practitioners by extending their admission to British subjects who have obtained proper qualifications at any of the Universities supported or controlled by the Governments of Germany, France, Holland, and Belgium.

Public Health.—No. 5 postpones for a further period of twelve months the general operation of the Public Health Ordinance, 1907 (Journal, N.S. vol. ix. Part II. p. 464).

Immorality.—No. 19 amends the Suppression of Brothels and Immorality Ordinance, No. 11 of 1903 (Journal, N.S. vol. vi. Part II. p. 401).

Scab.—No. 26 amends the Scab Ordinance, 1903 (Journal, N.S. vol. vi. Part II. p. 404), relating to scab amongst sheep and goats.

East Coast Fever.—No. 31 makes further provisions for preventing the spread of the disease amongst cattle known as East Coast fever, especially by granting the Minister of Works, Land, and Mines the power to cause fences to be erected along the boundary of farms within the infected area, the cost of such fencing to be defrayed by moneys voted by Parliament. The same power shall apply to the fencing of roads traversing any part of the Colony and of any area in the Colony marked off from any other part of the Colony.

National Hospital.—No. 38 repeals the National Hospital Ordinance 11 of 1906 (Journal, N.S. vol. viii. Part II. p. 357), and National Hospital Amendment Ordinance 21 of 1907 (Journal, N.S. vol. ix. Part II. p. 463), and provides for the management and control of the National Hospital. The management and control of the Hospital shall be in the hands of a Board of nine members to be nominated for one year by the Governor, by the Railway, and by the Municipality. The Board shall meet once in each month. After consultation with the Board the Governor shall appoint a resident doctor for the Hospital, who shall exercise such functions as the Governor shall determine. Other officers shall be appointed by the Board. The Governor may from time to time alter or rescind the regulations for the purposes set out in the Act.

The expenditure in respect of salaries, wages, and general maintenance of the Hospital shall be controlled by the Board and the annual report and statement of accounts shall be made to the Colonial Secretary and laid by him before the Legislative Assembly.

Export Prohibition.—No. 6 repeals the Angora Export Duty Ordinance, No. 8 of 1907 (Journal, N.S. vol. ix. Part II. p. 462), and prohibits the exportation of Angora rams and ewes save to countries or territories in respect

of which the Governor shall have declared by Proclamation that a reciprocal law is in force.[1]

Preservation of Game.—*Ostriches.*—No. 7 prohibits the exportation of ostriches and ostrich eggs save to countries with reciprocal legislation.[2]

Customs.—No. 12 amends the Customs Law of the Colony in connection with the amendments agreed to between the parties to the Customs Union Convention.

The protocol enumerating these changes is set out in the Schedule to the Act, and the Act itself names the amendments which accordingly are made in the Customs Amendment Ordinance, 1906 (Journal, N.S. vol. viii. Part II. p. 358).

Export.—No. 14 provides for the establishment of a port of exit for the export of oversea goods across the western boundary of the Colony in connection with the provisions made for the construction and working of the Hamilton-Kimberley railway.

No goods imported from oversea into the Colony shall be exported into Cape Colony otherwise than by such roads and ports of exit (other than by railway) as have been fixed by the Governor by notice in the official *Gazette*.

Mines.—No. 9 imposes a licence fee upon the discoverer's claim under the Ordinance relating to the mining of precious stones, No. 4 of 1904 (Journal, N.S. vol. vii. Part I. p. 174), and under the Ordinance relating to the mining of precious metals, No. 3 of 1904 (Journal, N.S. vol. vii. Part I. p. 172), where the discoverer fails to work his claim.

Land Settlement.—No. 13 provides for the disposal of Crown lands not tranferred to the Crown Settlement Board.

It is provided that the Governor may lease Crown land for any period exceeding five years on such conditions as he may deem fit, subject to the provisions of the Act.

Leases of Crown land for any period not exceeding five years shall be entered into by agreement in writing by the Governor on the conditions set out in the Act, and provides that all minerals are reserved to the Crown.

Railways.—No. 15 ratifies the conventions entered into by the Government of the Orange River Colony with the Government of the Transvaal relative to the joint working of the railways in each Colony and makes provisions for other matters consequent upon the termination of the Inter-colonial Council.

The convention was assented to on August 24, 1908, and is the same as the Transvaal Act No. 8 of 1908 with its Schedules (cf. p. 372).

No. 29 repeals the Railway Regulations Ordinance No. 45 of 1903, the

[1] Reciprocal laws are in force in the Transvaal, Cape Colony, Natal, Southern Rhodesia, Swaziland, Bechuanaland Protectorate, Basutoland, and the Province of Mozambique (cf. vol. ix. p. 462 and p. 380 *infra*).

[2] Cf. Journal, N.S. vol. ix. Part II. p. 476.

second proviso to s. 1 of the Crown Liabilities Ordinance of 1903, and the Railway Police Ordinance, No. 23 of 1903 (Journal, N.S. vol. vi. Part II. p. 401), and consolidates the railway regulations with amendments for the Colony.

The provisions of this Act are the same as those of the Railways Regulation Act of the Transvaal, 1908 (cf. pp. 372–3).

Railway Administration.—No. 37 provides for the organisation and discipline of and the payment on retirement of pension allowances and other benefits to persons in the employment of the Railway Administration.

The provisions of this Act are the same as those of the Transvaal Service and Convention Act, No. 20 of 1908 (cf. p. 373).

Arms and Ammunition.—No. 23 repeals the Arms and Ammunition Ordinance, No. 15 of 1902 (Journal, N.S. vol. v. Part II. p. 384), and s. 16 of the Game Ordinance, No. 9 of 1905 (Journal, N.S. vol. vii. Part II. p. 487), and re-enacts the provisions of the said Ordinance with some amendments and modifications.

Agriculture.—No. 24 repeals Chapter 121 of the Law Book and re-enacts and amends the law relating to the management of agricultural societies, their formation, the regulations of their membership and subscription, their committee, annual shows, and their relation to the Government.

Grass-burning.—No. 32 consolidates and amends the law prohibiting the burning of grass, except by owners and occupiers of land, after notice has been given by them to their neighbours.

Transfer Duty.—No. 30 amends the law relating to the payment of transfer duty in the case of contingent and absolute reversions and all inheritances *ab intestato.*

Education.—No. 35 repeals the Public Education Ordinance (Orange River Colony) No. 27 of 1903 (Journal, N.S. vol. vi. Part II. p. 404); the Public Education Ordinance, No. 29 of 1905 (Journal, N.S. vol. vii. Part II. p. 491), with the exception of ss. 47 to 51 thereof; and the Public Education Amendment Ordinance, No. 18 of 1907 (Journal, N.S. vol. ix. Part II. p. 462), and makes new provisions regarding the education (public and private) of children in the Colony.

The Act is divided into ten Chapters, of which the first two deal with the educational control and its compulsory character. Chapters III. to V. deal with the Schools and their Management; Chapters VI. and VII. with the Teachers, and the remaining chapters with the School Fees and other financial provisions regarding this subject.

The Education Department, with its Director of Education, has control over the whole educational system of the Colony under the ultimate supervision of the Attorney-General. The Attorney-General has the power to establish grants-in-aid to private schools or any institution for the instruction of a technical, scientific, or advanced literary character; public school libraries; orphanages and institutions for the education or maintenance

of children who are bodily or mentally deficient. He is also entitled to provide funds for bursaries; to assist in transporting children to the nearest school, or in providing them with secondary or industrial education, or in the maintenance of students who are qualifying themselves as teachers, or of those who pursue studies too advanced for the standard attained in any secondary school.

Education is compulsory for all children between seven and sixteen years of age, and it is the duty of parents to cause their children to attend regularly at school, unless any of the reasons prevail why a child should not be sent to school as are set out in s. 7 of the Act. The contravention of these provisions is the imposing of a fine upon the parent who neglects to comply with them, and it is the duty of every Board of Education to enforce in their respective districts the provisions of this Act with regard to compulsory attendance at school.

Public schools are established and maintained by the Government, and are divided into primary and secondary public schools. The schools are accessible to all white children. The English and Dutch languages are equally treated as medium of instruction in every public school. Every child up to and including Standard IV. shall be instructed in every subject through the language best spoken and understood by such child as the medium of instruction for such child.

After Standard III. both English and Dutch shall be taught as languages to every child, and after Standard IV. and up to and including the matriculation examination a minimum number of three principal subjects shall be taught through English, and a minimum number of three other principal subjects through Dutch as medium of instruction.

The Act sets out these principal subjects, and submits any differences regarding the medium of instruction in any public school for the consideration and decision of the Board of Education of the district or such governing body of any school as may be established by the Attorney-General in accordance with the provisions of Art. 77 of the Act. From these bodies an appeal shall lie to the Attorney-General.

Religious instruction is given at least twice a week in every school, up to and including Standard IV., in either the English or the Dutch language.

The Act sets out what are understood by primary and secondary public schools, and by trade and industrial schools. It provides continuation classes, and makes provision for teachers' training institutions or classes; leaving the establishment and maintenance of these schools in the hands of the Attorney-General.

All private schools are subject to the supervision of the Education Department. They must be registered, furnish returns of teachers and of all the daily attendances of pupils to such Department.

All private schools are subject to the sanitary inspection of the Board

of Education, and examinations or inspections shall be made at the request of the proprietor by the Director of Education.

The Act sets out the conditions upon which a private school may obtain grants-in-aid for each white child of parents resident within the Colony out of such portion of the general revenue of the Colony as may from time to time be voted by the Legislature for that purpose. Every such grant-in-aid shall, in the first place, be devoted to the payment of the salaries of teachers of the staff of the school concerned. The maximum of the amount of grant shall be fixed by the Attorney-General from year to year, and shall be the same for all aided private schools, and shall not exceed two-thirds of the average cost based on the number on roll, unreduced by the receipt of any school fees of instruction of children of a like class, grade, or standard at all public schools for the previous year. Besides receiving such grants of state aid private schools shall be entitled to charge school fees.

For the purposes of this Act, the Colony is divided into school districts.

The local management of any school is in the hands of a school committee, of which the members are elected by all parents who, at the time of election, have one or more children on the roll of such school, out of all white persons of full age who reside within the school district, and who are not disqualified for any reason set out in s. 35 of the Act. Their nomination and election take place in manner set out in the Act. These committees shall consist of a minimum number of five members, and in the event of less than that number having been elected, the rest may be appointed by the Attorney-General. The term of office of every committee shall be three years, and retiring members may be re-elected.

The Act makes further provisions for the administration, election expenses, nomination of chairmen, secretary, etc., and for meetings of local committees.

The powers and duties of school committees are largely extended. They have to bring to the notice of the Department through the medium of a School Board any matter which in the opinion of the committee concerns the welfare or efficiency of the school; to take such steps as may be necessary to keep the school building and premises in good order and repair; to take such part in the appointment or suspension or dismissal of teachers as is prescribed by the Act; to investigate complaints or matters calculated to act detrimentally to the interests of the school and to affect its welfare; to fix the school hours, and to exclude any child from school who for any of the reasons set out by the Act it is considered in the interest of the school that should be excluded; to provide for the necessary supply of books and school material, and to exercise such further powers and duties as may be delegated to it by the School Board.

Each school district into which the Colony is divided for the purposes of this Act has a School Board consisting of nine members, of which four

are appointed by the Attorney-General, and the others by the members of the school committees within such school district, in manner provided by the Act. Provisions are made for the administration of these School Boards which in many respects resemble the provisions set down for the school committees.

With the exceptions of certain schools which are excluded from their supervision, the general powers of the Board are: to exercise general supervision over all public schools, classes, and institutions within their respective districts. For that purpose any member of a Board shall have the right to enter any school, class or institution within such district, provided he does not interfere in any manner with the work which is being carried on therein. All reports of inspectors of schools are to be transmitted by the Director of Education to the School Board. The Board shall advise the Education Department as to provision of grants-in-aid to the schools in their district, and application for such grants should be made to the Board. The School Board shall further administer certain funds for the purpose of repairing school buildings, school furniture, bursaries; shall have powers and duties as to the care and use of school buildings, and consider matters submitted to it by school committees and managing bodies, as mentioned in clause 77 of the Act.

For those schools which are exempted from the supervision of the School Boards, special arrangements from time to time may be made by the Attorney-General.

The provisions regarding teachers mainly concern the due qualification of teachers, and their holding of certificates and licences for teaching; their appointment subject to conditions of service; the grading of posts and qualifications to be set forth in conditions of service. Teachers are to be appointed by the Director of Education on the nomination and recommendation of the school committees through the School Boards.

Teachers may be suspended by either the School Board or by the school committee pending inquiry by the Education Department, but their dismissal and transfer shall be made by the Director of Education.

If, at the expiration of three years after the taking effect of the Act, any public school, class, or institution shall be found incompetent to carry out the provisions regarding the teaching and using of either the English or the Dutch language in manner as set out in the Act, and reviewed above, it shall be the duty of the Attorney-General to take such steps—by the transference of teachers from one school to another—as will be necessary, in order to provide an efficient staff for such school, class, or institution with the view to giving effect to such provisions.

The further part of the Act provides for the establishment of a Council of Examiners for teachers, and describes their duties and the certificates and licences to be issued by the Council, and the examination to be held by them. It further provides for the school fees to be paid for the education

of the children, and the rules in which exemption of such payment can be made on proof of inability to pay on behalf of the parents.

The Act also provides the finances out of which the educational expenses have to be paid, the powers of legal authorities to make grants, the duties of the Governor to reserve lands for public schools, and the power of the Attorney-General from time to time to make orders and rescind regulations on such matters as are set out in s. 109 of the Act.

The Schedules of the Act set out a list of schools which make provision for secondary education, the school districts constituted under s. 32 of the Act, and the schools or institutions which are exempted from the supervision of the school committees and School Boards.

Natives.—No. 42 makes provisions relating to the granting of rights in immovable property to coloured persons.

4. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D., *Lecturer in Roman-Dutch Law to the Council of Legal Education.*]

Statutes Nos. 1–38.

Leprosy.—No. 2 further amends the Leprosy Ordinance, 1904, in some of its administrative details.

Lunacy.—No. 3 further amends the Lunacy Proclamation No. 36 of 1902 (Journal, N.S. vol. v. Part II. p. 392), mainly with regard to the provisional detention of persons suspected to be lunatics, and the release of lunatics detained at the Governor's pleasure.

Leprosy and Lunacy.—No. 4 creates a Transvaal Asylums Board consisting of three members (a doctor, a lawyer, and a layman) to be nominated by the Governor, and to remunerated out of the public funds.[1] Their duty will be to supervise the treatment of lepers and lunatics in the Transvaal: by visiting every asylum within the Colony at least once in every two months, and every ward in each asylum at least once in every six months, by giving every patient an opportunity of making in person any representation which he might wish to make, and by investigating every reasonable complaint or grievance made to them. The Board have to report to the Colonial Secretary, and have a right to discharge lunacy patients from the asylums. They have no authority over the officers of the asylums, but the superintendent of any asylum concerned has to attend the Board's meetings as advisory member.

Contagious Diseases.—No. 22 amends the law relating to the notification of infectious diseases, and provides that the Colonial Secretary can, from

[1] The first Board was appointed by Government Notice 1005 of 1908 (*Gazette*, October 2, p. 11).

time to time, by notice in the *Gazette* declare that any disease mentioned in s. 4 of Proclamation No. 21 of 1900 is no longer notifiable.[1]

Police.—No. 5 repeals Proclamations No. 24 of 1900, No. 1 and No. 15 of 1901 (Journal, N.S. vol. iv. Part II. p. 304), and Ordinance No. 10 of 1906 (Journal, N.S. vol. viii. Part II. p. 360) and provides for the establishment, organisation, and control of the Transvaal police. It enacts that in times of emergency the Governor may employ the force for the purpose of assisting in the defence of the Colony either within or beyond the borders thereof.

Administration of Justice.—*Criminal Law.*—No. 16 repeals Volksraad resolution of December 4 and 5, 1871, No. 441, regarding criminal libel, amends the Immorality Ordinance No. 46 of 1903 (Journal, N.S. vol. vi. Part II. p. 417) regarding the framing of charges and Art. 2 of Law No. 3 of 1870 regarding grass-burning. It further contains provisions regarding the crimes of unlawful carnal connection with girls under sixteen years of age, and arson; the custody of children under sixteen years of age charged with crime, and the custody of children under eighteen years of age of parents charged with crimes.

Prescription.—No. 26 repeals Art. 16 of the Placaat of the Emperor Charles V. dated October 4, 1540, and relating to prescription of actionable rights to two years in certain cases, and provides a general law regarding the period of prescription of actions, fixing the period of prescription in respect of matters for which a shorter period is not specially fixed at thirty years.

Judgments of a Court of law shall be exempt from prescription.

The Act also provides rules for the commencement of the prescription, its interruption and suspension, and sets out the circumstances under which prescription is considered not to be interrupted.[2]

No. 30 amends Proclamation (Transvaal) No. 21 of 1902 (Journal, N.S. vol. v. Part II. p. 390) relating to Courts of Resident Magistrates, and extends the number of Courts for other districts than those named in the Act. It gives power to the magistrates to try juvenile offenders in private, while the Governor is entitled to declare by Proclamation in the *Gazette* that the Dutch language shall be used equally with English in all proceedings and in all summonses and notices to be issued by the Court.

No. 33 provides for the admission of law agents as attorneys to the Supreme Court on the passing of an examination in law, and sets out the particulars of such special examination.

Military.—No. 21 provides for the exercise of the powers of jurisdiction conferred by the Volunteer Corps Ordinance No. 37 of 1904 (Journal, N.S. vol. vii. Part I. p. 182) by other persons than those named in the said Ordinance and to be specially appointed by the Governor in Council.

[1] Government Notice No. 909 of 1908, p. 1016, for the declaration of certain diseases as no longer notifiable.

[2] This Act came into operation on October 5, 1908.

Field Cornets.—No. 23 repeals s. 6 of the Field Cornets Act of 1907 (Journal, N.S. vol. ix. Part II. p. 468).

Railways.—No. 8 ratifies certain conventions entered into by the Governments of the Transvaal and the Orange River Colony on June 1, 1908, relative to the joint working of the railways in each of the Colonies, and makes provisions rendered necessary by the signing of these conventions.

By the first convention of that date the Inter-Colonial Council established under the Inter-Colonial Council (South Africa) Order-in-Council was turned into a body corporate owning all railways, railway equipment, and other railway assets of the two Colonies. These railways were to be administered on and after June 2, 1908, as one system by a Board consisting of five members to be nominated by the Governments of the two Colonies, viz. three by the Transvaal, of whom two at least would be Ministers, and two by the Orange River Colony, of whom one at least would be a Minister. The headquarters of the administration to be at Johannesburg, but the Board to have for legal purposes in the Orange River Colony a *domicilium citandi et executandi* at Bloemfontein.

The Board has full powers of administration, inclusive of the construction of lines, the negotiation with Governments and the entering into agreements regarding matters affecting or incidental to the administration or the working or the control of any railways.

The management is in the hands of a General Manager appointed and instructed by the Board.

Special provisions are made for the financing of the railways, and the share which each Government shall bear of the railway expenditure, while railway estimates of revenue and expenditure shall be prepared annually by the Board after consultation with the Governments of both Colonies.

The construction of new lines shall be first of all left to the Board. If the Board do not want to construct for joint account, the particular Government concerned may construct for its own account, provided that such line is not likely to compete—in the opinion of the Board—with any of the existing lines. Any line so constructed is to be worked by the Board for account of the Government concerned, unless the Board prefers to take it over and work it for joint account.

All disputes which cannot be settled by agreement between the two Governments shall be settled by arbitration.

The second convention entered into on June 1, 1909, provides for the payment of pensions or gratuities to persons employed in services administered by or on the advice of the Inter-Colonial Council, and for the apportionment and division between the Transvaal and Orange River Colony of liability for such pensions and gratuities.

A schedule is annexed setting out a scale and conditions of pensions or gratuities to officers to be provided for in bills.

No. 13 repeals the Railway Regulation Ordinance No. 60 of 1903

(Journal, N.S. vol. vi. Part II. p. 412) and the Railway Police Ordinance No. 18 of 1903 (Journal, N.S. vol. vi. Part II. p. 411), and re-enacts the provisions contained in these Ordinances with certain amendments. It may be said to contain the railway law of the Transvaal, and came into operation on August 28, 1909.

No. 20 provides for the organisation and discipline of and the payment on retirement of pension allowances and other benefits to persons in the employment of the railway administration.

No. 25 provides under the above convention for the construction of a railway by the Railway Board from Belfast to Lydenburg in the Transvaal, and to authorise the Government of the Transvaal to advance to the Railway Board moneys to meet the cost of such construction.

Natives.—No. 9 repeals the Native Tax Ordinance, 1902 (Journal, N.S. vol. v. Part II. p. 392), and its Amendment Ordinance, 1906 (Journal, N.S. vol. viii. Part II. p. 362), and regulates afresh the law relating to the taxation of natives.

Asiatics.—No. 36 validates the voluntary registration of certain Asiatics who failed to comply with the provisions of Act No. 2 of 1907 (Journal, vol. ix. Part II. p. 468) and makes further provision for the registration of Asiatics after the commencement of this Act.

Immigration.—No. 38 amends the Immigrants Restriction Act, No. 15 of 1907 (Journal, vol. ix. Part II. p. 471), by giving an amended definition of prohibited immigrant.

Public Service.—No. 19 provides (1) for the organisation of and (2) for the discipline in the public service of the Transvaal. It regulates in the third place the retiring pensions of officers in that service (other than officers described in the Pensions Ordinance, 1906).

The Public Service is divided into two branches: (1) the administrative and clerical service, and (2) the general service.

A Public Service Board is created of three members to be appointed by the Governor and whose duty it will be to keep a register of applicants for appointments, to submit to the Minister concerned the names and qualifications of persons suitable for appointment, to keep a record of all officers in the service, to advise the Minister concerned regarding any officer, to inquire into cases of breach of discipline, to advise as to the preparation and interpretation of all regulations framed under this Act, and to prepare annually for publication a list of persons employed in the public service.

A third chapter of the Act establishes a general pension fund applicable to all officers in the administrative and clerical service of the Transvaal, separate from the pensionable officers mentioned in Ordinance No. 30 of 1906 (Journal, N.S. vol. viii. Part II. p. 364). The Pension Fund shall consist of

(*a*) Provision made by the officers at the rate of £4 per cent. of their salaries to be paid annually; and

(*b*) Of a sum of money equal to the aggregate of the provision made

by the officers, to be paid monthly, and compound interest at the rate of 8 per cent. per annum on the amount of the provision made by the officers as calculated from 1900, and interest at the rate of 4 per cent. per annum on the uninvested balance of the Pension Fund.

The fund shall not apply to persons who have not been continuously and exclusively employed in the public service at a regular monthly salary and who are under the age of seventeen or whose age was on appointment forty-five years or over.

The prescribed age of retirement shall be fifty-five years except for Ministers concerned, whose age of retirement shall be sixty unless prolonged in exceptional cases to sixty-five years of age. Special provisions are made for officers employed in lunatic asylums, leper asylums, etc., and for them the age of retirement is fixed at fifty years.

A scale of pensions thus payable is set out as well as the pensions payable to officers who are medically unfit to continue their service. Provisions are made for gratuities to widows of officers dying whilst in the service, and these gratuities are not left to the discretion of the Governor, but fixed on a certain scale; also for gratuities to be given to female officers on their marriage.

In Chapter 4 provisions are set out for special pensions relating to police officers, subordinate officers in the sense of persons named in Ordinance No. 6 of 1906 (Journal, N.S. vol. viii. Part II. p. 360), and nurses in lunatic and leper asylums.

In Chapter 5 provisions are made for the establishment of a Provident Service Fund to which every officer permanently in the general service, other than the officers provided for in Chapter 4 and the above-mentioned Pensions Ordinance of 1906, shall provide 2 per cent. of his salary. These contributions shall be paid back to each officer together with compound interest at the rate of 4 per cent. per annum and the appropriate share of any income which has accrued to the fund, on such officer reaching the age of fifty-five, or being compelled to retire from the service under the age of fifty-five on account of ill-health. Similar repayment, but without interest, shall be made to such officer retiring voluntarily from the general service. The object of this fund, however, is to create a guarantee for good behaviour, and persons dismissed from the general service shall forfeit all contributions to the Provident Fund.

Chapter 6 creates a similar Provident Fund on behalf of the regular teaching staff of the education department.

Chapter 7 makes provisions for further payment of pensions to officials of the late South African Republic, while in Chapter 8 general provisions are made, giving the Governor power to make certain regulations, to reduce salaries or suspend increment of pay in certain circumstances, regarding the suspension of forfeiture of pensions in certain cases, to declare

pensions not assignable or executable, nor payments out of provident funds and for objects of minor importance.

In the first and second schedules the different classes are set out of officers who are considered to form part of the clerical and medical service.

Cattle Disease.—No. 10 amends in minor respects Ordinance No. 17 of 1902 (Journal, N.S. vol. v. Part II. p. 398) and Ordinance No. 38 of 1904 (Journal, N.S. vol. vii. Part I. p. 179), with which it forms one enactment, and adds provisions regarding the necessity of permits to purchase cattle in areas stricken with East Coast fever and penalties for collecting or being in possession of cattle ticks with intent to spread any disease amongst cattle.

Fencing.—No. 12 repeals the Fencing Ordinance, No. 7 of 1904, (Journal, N.S. vol. vii. Part I. p. 180), and provides fresh legislation regarding the fencing of farms and other holdings. It enables persons who occupy any holding in a manner beneficial to the land to obtain advances from the Landbank sufficient to obtain the materials necessary for fencing their lands. For that purpose the Bank shall from time to time supply the Department of Agriculture with funds to buy the materials required for fencing, and these materials the Department for Agriculture will sell to the applicant at cost price.

As a guarantee for the repayment of such advances, the Bank receives a first charge on any such holding, after consultation with the holder of any existing mortgage, and such charge shall be registered and pass with the land.

The supervision over the compulsory fencing of lands rests with the Department of Agriculture.

The Act further contains provisions regarding the clearing of bush for fencing, the kind of fences and the manner of placing them, their repairs, and the access to lands of persons entrusted with such repairs. In the third Chapter provisions are set out against the offences under this Act, viz. of leaving gates open and maliciously or accidentally injuring fences.

Co-operation and Agriculture.—No. 17 provides for the formation, registration, and management of Co-operative Agricultural Societies. Co-operative Agricultural Societies may be formed for the purpose set out in Art. 4 of the Act, which mainly regard co-operation in production, such as the manufacturing or treating on joint account of the agricultural produce of their members; the initiating of irrigation schemes; the purchasing, hiring, or otherwise acquiring and working on behalf of the members of agricultural implements and breeding stock; the purchasing or otherwise acquiring of stock, feeding stuffs, seeds, fruit trees, manure, agricultural implements and others; the raising of money on loan, the commencing and carrying on of insurance societies for their members, the acquiring of immovable property and other lawful objects.

Each such Society must be registered, together with its regulations.

Model regulations are set out in the schedule to the Act, while special provisions are set out to be observed for such registration.

The liability of the members for all debts incurred after their ceasing to be members shall end together with their membership. As to the debts incurred during their membership, their liability ends as soon as the financial statement of the Society signed by its auditor shall have been adopted in general meeting.

For the purpose of determining this liability, a list of members shall be kept at the Society's office and a copy thereof shall be registered.

Rules are further provided for the management of a Society, its voluntary or compulsory dissolution, and penalties for contraventions under this Act.

Irrigation and Water Supply.—No. 27 repeals Law No. 17 of 1887, Law No. 11 of 1890, and Ordinance No. 67 of 1903 (Journal, N.S. vol. vi. Part II. p. 416), and consolidates and amends the law relating to the use of water of public streams, and provides further facilities for the use of water for irrigation purposes.

The Act follows the provisions of Act No. 32 of 1905 of the Cape Colony, and its object is to create a combined system of control by the riparian owners of the mining waters in each district and distribution of water over the various lands.

For this purpose the Act creates an Irrigation Department under the Minister of Lands, the functions of such department to be to supervise and control irrigation works, to prepare and provide hydrographic maps, to make surveys, plans, and estimates for public irrigation works, to prepare schemes for the prevention of the run-off and for the conservation of rain water, to examine and advise upon any scheme for the establishment, maintenance, repair, or alteration of irrigation works, to advise as to the expediency or otherwise of granting loans in connection with irrigation works, and generally to carry out the powers and duties conferred by this Act or imposed upon the Governor or the Minister.

It provides for the powers of the Governor in connection with irrigation works and the construction of such works when considered necessary.

For the better carrying out of the provisions of this Act and for the local control for the use of public water, River Districts are constituted which shall be proclaimed in any district by the Governor. At the head of such River District is placed a River Board to be elected by all persons qualified to have a vote. Such qualifications are set out in the first schedule of the Act and depend upon the possession of land within the river district. The same qualification applies as qualification for being a member of the Board, the Board to hold office for a period of three years and to be dissolvable by the Governor on its refusal to carry out its duties.

The duties of such Boards and their procedure of working are set out at full length. In order to enable the Board to defray any expenditure lawfully incurred by them under the Act or the legislation made in con-

sequence, they are entitled to levy *river rates* from all persons who hold one or more votes in the district. The voters shall be consulted annually as to their contribution, and no levy shall be made unless decided upon by a majority of one-third of the voters.

The Governor has a right to veto such resolution.

In order to defray the cost and redemption charges on expenditure lawfully incurred by a Board in the construction of irrigation works for any particular portion of its district, the Board may levy *irrigation rates* on all land irrigated or capable of being irrigated by such works, and the persons benefiting by such irrigation shall equally be consulted, and their consent must be obtained previously to the levying of such rate.

The River Board shall have power to raise loans, to make by-laws, and to exercise jurisdiction over Crown farms.

The Governor may allow the establishment of co-operative irrigation societies, while the Pretoria Municipality and Rand Municipality of Johannesburg are exempt from the jurisdiction of any River Board.

Chapters 3 and 4 provide for the use of private and public water flowing on the surface and of subterranean water.

Chapter 5 creates Water Courts to take the place of the arbitrator under Law No. 11 of 1894. The Courts shall consist of three persons appointed by the Governor, one of them to be in every case a Judge of the Supreme Court, a resident magistrate, or an advocate, and each of the other two to possess taxed property within the Colony of the value of £500 at least. Such Courts shall have exclusive jurisdiction, in the first instance, to hear any disputes arising between two or more River Boards, or between the River Board and any person, or between any two or more persons in relation to the diversion, use, storage, or appropriation of public water. A Water Court shall be appointed whenever a dispute arises.

An order or award given by a Water Court shall have the same effect as an order of the Supreme Court, and an appeal against such order or award shall lie to the Supreme Court. Orders or awards not appealed against within two months after they have been pronounced, or—if appealed against—any final judgment shall be registered against the title to any farm to which the order or award refers.

The procedure to be followed in the Water Court shall be the same as that of the Magistrates' Courts.

Chapter 6 makes provisions regarding the servitudes which may be acquired under this Act in respect of water, viz. servitudes of storage, of discharge of water, or of abutment, or any other. It sets out the duty of every proprietor for the construction of such works as will make communication of water safe and convenient. It describes a mode of acquiring servitudes, the jurisdiction of Water Courts regarding claims for servitudes, the conversion of temporary into permanent servitudes, and the lapse and registration of servitudes.

The Act further provides for loans, subsidies, grants, and aids to be obtained from the Governor for irrigation purposes, the right of entry upon land, and the offences, and penalties in connection with this Act and their punishments.

The Schedules to this Act set out different forms regarding the procedure under the Act.

Land and Agricultural Bank.—No. 37 amends the Land and Agricultural Bank Act, No. 26 of 1907 (Journal, vol. ix. Part II. p. 473). The amendments are principally concerned with interest on advances, and the times of repayment of principal and interest, and the advances to be made to co-operative societies and the repayment of loans.

Education.—No. 28 amends the Public Education Act, No. 25 of 1907 (Journal, N.S. vol. viii. p. 471), in some minor respects.

Mining.—No. 29 repeals Proclamation (Transvaal) No. 35 of 1902 (Journal, N.S. vol. v. Part II. p. 387), Ordinance No. 6 of 1902 (Journal, N.S. vol. v. Part II. p. 387), and Ordinance No. 6 of 1903 (Journal, N.S. vol. vi. Part II. p. 406), and consolidates and amends the law governing the registration of mining titles in the Transvaal.

Precious Stones.—No. 31 amends the Precious Stones Ordinance No. 66 of 1903 (Journal, N.S. vol. v. p. 414), and regulates afresh the method of calculating and dividing between the Crown and the owner of the profits of a mine on private land.

No. 35 repeals Law No. 18 of 1896, the Base Metal Law No. 14 of 1899, the Gold Law No. 15 of 1898, and a number of Volksraad resolutions and Acts set out in the first schedule to the Act, and consolidates and amends the law relating to prospecting and mining for precious stones and base metals and matters incidental thereto.

The Act is divided into four parts relating to the following matters: Part I. regards the administration of the mining laws by the Mines Department, subject to the direction and authority of the Minister of Mines. Part II. relates to the precious metals, inclusive of the rules for prospecting for and discovery of metals, rights of owners on private lands (*mynpacht*), proclamation of public diggings, pegging of claims, and licence money in respect thereof (*bezitrecht*), water rights and use of water, surface rights on ground held under mining title and use of other proclaimed land, on unproclaimed private land, stands outside townships, lapsing of rights, and dealing in unwrought precious metals. Part III. relates to base metals; and Part IV. contains general and miscellaneous provisions regarding the mortgage of claims and proclaimed fields, the powers of entry on private land, the mining commissioner's jurisdiction, when the holder of a mining title may be ordered to commence or continue work and the penalty for not complying with that order, the maintenance of a State Mining School, Government assistance to prospectors by medium of public batteries, the prohibition against acquisition of rights by coloured persons, the production of licences

on demand, and the penalties of imprisonment and others for offences committed under this Act.

Closing Time.—No. 32 regulates the closing time of shops and hairdressing saloons in towns, villages, and other places. In connection herewith it amends Law No. 28 of 1896 and the Municipal Amending Ordinance, 1906 (Journal, N.S. vol. viii. Part II. p. 364).

The Act divides the shops into three categories, viz. firstly, those in which any of the businesses is conducted set out in the schedule to the Act regardless of the place where it is conducted; secondly, those in which any other business is conducted than those set out in the said schedule in such places as are set out in s. 4 of the Act; and thirdly, all shops in which any other business is conducted than those set out in the said schedule in any other place than those mentioned in s. 4 of the Act.

For each of these categories the Act provides special hours of closing, while in s. 6 the businesses are mentioned which shall be entirely exempted from the working of this Act.

It is further provided that all shops shall be closed on public holidays. Limitation of hours is enacted for auctioneers, pedlars, and hawkers, and the prohibition of the sale of food in eating houses after closing time except as to food consumed on the premises, whilst special regulation is made for the closing hours of shops doing mixed business.

The Act also limits the hours of shop assistants and sets out the penalties for contravention of this Act. The prosecution for any such contravention is limited to one month from the time when such contravention is committed.

Export Duties.—No. 24 repeals the Angora Export Duty Ordinance No. 3 of 1906 (Journal, N.S. vol. xiii. Part II. p. 60), and legislates afresh the prohibitions against the exportation of Angora rams and ewes save to colonies or territories with reciprocal legislation.[1]

Finance.—No. 1 charges public revenue with £500,000 towards the service of the year ending June 30, 1909.

No. 7 applies a sum not exceeding £1,190 2*s.* 1*d.* for the purpose of meeting and covering certain unauthorised expenditure for lands, agriculture, and forests.

No. 11 applies a further sum not exceeding £145,618 for the service of the year ending June 30, 1909, in manner set out in its schedule.

No. 14 appropriates a sum of £4,320,062 for the service of the year ending June 30, 1908.

No. 18 provides for the application of surplus public revenues to the redemption of debentures of the Franco-Belgian Northern Railway Company

[1] Proclamation No. 91 of 1908 (*Gazette*, October 23, 1908, p. 144) sets out that the prohibition does not apply to Cape Colony, Natal, Orange River Colony, Southern Rhodesia, Swaziland, Bechuanaland Protectorate, Basutoland, and the Province of Mozambique.

of the South African Republic (otherwise known as the Selati Railway Company) and for other purposes relating to the public revenues of the Colony.

Townships.—No. 34 provides rules for the establishment of new townships on proclaimed land and in municipalities and for the conversion of titles in certain township lots to freehold, and amends the Townships Act No. 33 of 1907 (Journal, N.S. vol. ix. Part II. p. 476).

Customs.—No. 6 amends the customs tariff and customs law by increasing the duties on certain articles, and in other respects.

Audit.—No. 15 amends s. 20 of the Audit and Exchequer Act, No. 14 of 1907 (Journal, N.S. vol. ix. Part II. p. 468).

5. SOUTHERN RHODESIA.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—15.

Stock and Produce Theft (No. 5 of 1907).—This kind of theft is so easily committed in a country like Rhodesia as to call for special treatment to repress it. "Stock" has a wide meaning, including horses, asses, kine, goat, swine, or domesticated ostriches and their carcasses. "Produce" includes skins, hides, horns, wool, mohair, and ostrich feathers.

A first offence is punishable alternatively with a year's imprisonment, three months' imprisonment with "spare diet," or fifteen lashes, which is increased to two years' imprisonment and twenty-four lashes on a second conviction.

Judgment for compensation may also be given, and a fine may be imposed not exceeding ten times the value of the stock or produce.

Suspected persons may be apprehended and searched; when the spoor of a stolen animal is traced to a kraal, the head of the kraal is to be responsible for its value. An owner may demand from the persons living in the neighbourhood all reasonable assistance in following up a spoor—amended Ordinance No. 5, 1908.

Companies (No. 11).—Omission to file a contract where shares were not paid up in cash often occasioned injustice under our own company system. To remedy it what is known as Palmer's Act, 1898, was passed. Southern Rhodesia does the same thing by means of this Ordinance. It also adopts the section of our Companies (Consolidation) Act, 1908—s. 88—for returns as to allotments and filing contracts where shares are not paid in cash.

Goats and Ostriches (No. 12).—No Angora goat or ostrich or ostrich egg is to be exported beyond the limits of Southern Rhodesia except in favour of a neighbouring State which has also prohibited such exportation.

Brands (No. 1).—This Ordinance gives any person the right on payment

of a fee to have a brand allotted to him, but he cannot claim any special form or design.

Hawkers (No. 2).—An application for a hawker's licence is to be made to the Municipal Board or Sanitary Board or Village Management Board controlling the area where the hawker desires to trade, and must be advertised in at least one newspaper circulating in the district. Any person may appear in opposition, and before granting the licence the Council or Board may instruct the officer of police in charge of the district to make inquiries in regard to the application.

Lunatics (No. 3).—This is an Ordinance of seventy-three sections amending the lunacy law of the Colony. Lunatics in Southern Rhodesia are divided into two classes: lunatics who are "Administrator's Pleasure Lunatics or Criminal Lunatics," and those who are not. This rather singular description—Administrator's Pleasure Lunatics—means any person for whose detention during his pleasure the Administrator is authorised to grant an order. In both cases provisions are made for the care and administration of the lunatic's property; and penalties are imposed on persons detaining alleged lunatics except under the provisions of the Ordinance. Lunatic children may be placed by their parents in institutions appointed by the Administrator upon the certificate of a duly qualified medical practitioner.

Persons may voluntarily submit themselves to treatment in an asylum on certain terms. Mechanical means of bodily restraint are not to be applied to any lunatic unless for surgical or medical treatment.

Any magistrate may order an inquiry and summon witnesses.

Fugitive Offenders.—No. 6 amends the Fugitive Criminals Surrender Ordinance, 1905, by substituting a new schedule specifying the offences for which fugitive criminals may be surrendered.

Half-Holidays for Shops (No. 13).—The local authority may make an order closing all shops in the district on Saturdays not earlier than one o'clock or later than half-past one. After such an order, it is to be unlawful for any shopkeeper to keep open his shop or to carry on business therein, or do or permit any act whereby an employee is or may be deprived of his half-holiday. The penalty is £25.

Miscellaneous.

Incorporated Law Society, established (No. 11).
Juries, amends the law as to (No. 10).
Mines and Minerals, amends law as to (No. 15).
Tariff Amendment (No. 8).
Special Justices of the Peace, jurisdiction enlarged (No. 9).
Supply (Nos. 12 and 13).

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. GAMBIA.

Ordinances passed—15.

Tariff.—The strength of spirits is to be reckoned according to Tralles's alcoholometer, standard strength being 50° of alcohol, corresponding to 12½ per cent. under proof by Sykes's hydrometer. The duty on spirits of and under standard strength is to be 4*s.* 2*d.* per imperial gallon, and 1*d.* per degree over; on all spirits sweetened so that the degree of strength cannot be so ascertained, 4*s.* 2*d.* (Ordinance No. 1).

Markets.—By Ordinance No. 2 the Governor has power to establish markets, and to make regulations for the management thereof.

The other ordinances are unimportant.

2. GOLD COAST.

(i) COLONY.

Ordinances passed—9.

Infectious Disease.—No. 2 is an ordinance similar to that of Southern Nigeria (see p. 387), except that small-pox and cerebro-spinal meningitis are included with cholera, plague, and yellow-fever.

Railways.—The Colony raises a loan of £1,610,000, whereof £867,000 goes to the Sekondi-Kumasi railway, £300,000 to the Accra railway, £135,000 to the Tarkwa-Broomassie railway, and the residue to harbour works at Accra and Sekondi.

Tariff.—Exemptions are given, from the regular 10 per cent. import duty, in favour of aerated waters, cyanide zinc shavings and borax, motor and velocipede accessories and materials for repair.

(ii) ASHANTI.

Fetish.—Penalties are prescribed (six months' hard labour or £50 fine) in respect of promoting or encouraging the worship of any fetish which it is pretended has power to protect persons in the commission of crime. Power is also taken to the Governor to make regulations as to the celebration of native customs or rites which have a tendency to lead to breaches of the peace.

(iii) NORTHERN TERRITORIES.

Ordinances passed—5.

Jurisdiction of Courts.—There is a chief commissioner who presides over these territories; under him are provincial commissioners, and under them district commissioners. The Chief Commissioner's jurisdiction under this Ordinance (No. 3) is appellate only, appeals lying from all the commissioners' courts. Broadly speaking, the Commissioner's civil jurisdiction ranges to values of £300, and his criminal powers to fines of £100 or imprisonment for twelve months.

Special jurisdictions are those of a "travelling commissioner" and the limited criminal jurisdiction, which may be conferred upon any officer in remote places.

Fetish.—The Ashanti Law, above noted, is extended to these territories.

3. SIERRA LEONE.

Ordinances passed—40.

Criminal Evidence.—Ordinance No. 2 follows the English Act of 1898; but, as in the Gambia Law of 1907, makes husbands and wives in non-Christian marriages compellable witnesses, with this saving, that no party to a Mohammedan marriage is compellable to disclose communications made during marriage.

Fetish.—No claim is to be entertained by any Court in respect of any trading debt incurred by means of the native custom called "Sama" or any like device, or any lottery.

Labour.—The terms upon which natives of Sierra Leone can be engaged for service elsewhere are comprised in No. 9, which repeals the existing Laws of 1896 and 1898. The provisions of British African Laws on this subject are now familiar. The contract must be in writing, and must specify nature and place of service, remuneration, also a stipulation that the employer will provide the employee with means to return. The contract must not be for more than three years. The employer must deposit security. The schedule gives a model form of contract and bond.

The Labour Ordinance (No. 17) of 1905 is amended by No. 16, by a provision enabling a tribal ruler to make a preliminary inquiry into complaints of employees. If he thinks the employee is entitled to relief, the latter is entitled to a summons from the Summary Jurisdiction Court free of charge, but the cost of summons may nevertheless be dealt with by the Court at the hearing.

Firearms.—The law relating to the importation of and traffic in firearms was hitherto to be found in no less than six ordinances from 1892 to 1905.

These are now consolidated with amendments, so that the present Law (No. 10) may be taken to be the last word on the subject. An imported firearm must be deposited in a public warehouse. Only flint-lock guns can be freely withdrawn for sale; arms of precision are only to be issued to persons "affording sufficient guarantees," as the Brussels Act provides.

Somewhat more strict provisions are applied to the Protectorate. Dealers must be licensed, and they must not have a greater stock than their licence allows.

Medical Practitioners.—A general Law (No. 15) comprises provisions for the registration of medical practitioners, midwives, dentists, and druggists. Medical practitioners and dentists must obtain their qualification abroad, there being no provision for getting diplomas in the Colony. On the other hand, certificates of competency as druggists can be obtained on examination, and the Principal Medical Officer can give certificates to midwives. In the part of the ordinance relating to druggists are comprised the usual provisions as to sale of poisons.

Post Office.—No. 20 is similar to the Law of Southern Nigeria, noticed below (p. 386).

Tariff.—The duty on spirits is raised 1*s.* per imperial gallon (No. 25).

Grand Jury.—Those who advocate the abolition of grand juries may be encouraged by the example of Sierra Leone, where a new Law (No. 14) provides as follows:

> There shall be no proceeding by Grand Jury in criminal prosecutions in the Colony, and all crimes, misdemeanours, and offences cognisable in the Courts of Oyer and Terminer and General Goal Delivery of the Colony shall be prosecuted by information in the name of the Attorney-General or other officer duly appointed for such purpose by the Governor.

4. NORTHERN NIGERIA (PROTECTORATE).

Proclamations passed—21.

Police Force.—A constabulary force is established by No. 1 of these laws, still inaptly termed Proclamations. The lines of other African Laws on this subject are followed.

Tariff.—The duty on spirits is fixed at 4*s.* per gallon where the strength is 50 per cent. according to Tralles's hydrometer, and 1*d.* in addition for every degree beyond (No. 2). A new Schedule of Exemptions is substituted for that included in the tariff of 1904. There being a customs arrangement with Southern Nigeria, all goods which have already paid duty there are exempt. In other respects the exemptions are properly wide in this young dependency, where nearly every appliance of utility has to be imported.

Domestic Servants.—The law to which we called attention in our

Review for 1905[1] is amended in some small respects (No. 6), but we may trust that it is in the category of temporary enactments. It seems contrary to justice that a servant who has been convicted of "larceny or any cognate offence" should be cut off from all possibility of being employed as a servant again.

Native Courts.—The Law of 1906[2] gave wide powers to the native judiciary. The amendment now made by No. 10 is that a Native Court on passing sentence of death must send to the Resident a report upon the case with minutes and notes of evidence. The Resident sends a précis of the facts of the case, with the documents, to the Governor, and records his reasons in support of the sentence or otherwise. No sentence of death is to be carried out until it has been confirmed by the Governor.

Infectious Disease.—In No. 12 are comprised the normal provisions as to notification of the infectious disease, and also as to vaccination, disinfection of houses, etc. It is similar to the law of Southern Nigeria (see p. 387).

Criminal Procedure.—No. 15 follows the English Act as respects the evidence of accused persons, but follows other African precedents in making spouses in non-Christian marriage compellable, as well as competent, witnesses.

The same law provides that no informations are to be filed in the Supreme Court (other than *ex-officio* informations of the Attorney-General, and such as may be filed by direction or with the consent of the Chief Justice) unless there has been a preliminary examination, and the accused has been committed for trial.

Ordeal, Witchcraft, and Fetish.—"Trial by the ordeal of sass-wood, esere-bean, or other poison, boiling oil, fire, immersion in water, or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in death of or of bodily injury to any party to the proceeding shall be and is hereby prohibited" (No. 16). If death occurs, it is murder, and any person taking part in trial by ordeal is liable to a penalty of £100 or imprisonment for a year.

Accusation or profession of witchcraft is an offence punishable with a fine of £50 or imprisonment for six months.

Similar penalties await any person who makes or uses any *juju* or charm intended to prevent another from doing a lawful act, or to compel him to do an act against his will, or "alleged to possess the power of causing any natural phenomenon."

Chiefs, of course, ought to know better; accordingly, any one of them who takes part in any of these practices is liable to a fine of £200 and imprisonment for three years.

[1] No. XVI. N.S. p. 501. [2] See Review in No. XVIII. N.S. p. 371.

5. SOUTHERN NIGERIA.

Ordinances passed—30.

Customs.—A comprehensive customs Law of 270 sections supersedes the Lagos Ordinance of 1876, the Niger Coast Ordinance of 1894, and subsequent amending Ordinances (No. 2).

Statute Law Revision.—Consequent upon the Letters Patent of February, 1906, under which Lagos became Southern Nigeria, the existing ordinances of Lagos are repealed, but are re-enacted with amendments, and renumbered as shown in the schedule to Ordinance No. 3.

The volume presumed to be scheduled to this Ordinance seems, in fact, to have been printed in London, and accordingly a subsequent Ordinance (No. 9) provides that for the purpose of the evidence (Colonial Statutes) Act, 1906, Messrs. Stevens & Son, of London, are to be "deemed to have been" the Government Printer.

A further number of small amendments in the volume are made by Ordinance No. 14.

Railway.—Provision is made for raising by loan a sum of £3,000,000 for the large scheme of railway extension, for administrative and commercial objects, in the two Nigerias. The length of the whole is just over 670 miles, whereof 400 are in Northern Nigeria; the northern 550 miles of the line are to be constructed of "pioneer type." The loan includes £200,000 for harbour works at Lagos (No. 7).

Leprosy.—An interesting law (No. 10) shows the means adopted by a civilised Government for dealing with lepers. Asylums are to be established, in which any leper may be confined; but it would seem that no obligation is thrown upon the officials to act, unless there is danger to the public, as, for instance, where the leper carries on a trade or uses a public conveyance. The cost of detention, or part of it, has to be found by the relatives or native community to which the leper belongs. The Governor may in his discretion discharge a leper from an asylum, though not cured. The Ordinance may seem to err on the side of laxity, but in fact it carries all requisite powers to be exercised as medical advice may dictate.

Post Office.—By No. 12 every master of a ship, not under contract to carry mails, is obliged to carry to his port of destination any mail-bags delivered to him by the Postmaster-General; a gratuity of 1*s.* 4*d.* per letter and 3*d.* per parcel is given.

Land.—Considerable difference of opinion exists as to the best mode of exploiting Crown Lands in new territories, with a view to securing the cultivation or other use of the land, and, for the Government, a share of the increment value. A fair system seems to be established by Ordinance No. 13. In all grants the rent fixed is to run until December 31, 1938—*i.e.* not more than thirty years. At that date the Governor is to fix the rent for the

ensuing thirty years, and so on. In making the revision the landlord's improvements are not to be taken into account; and the Governor may view the country by areas, fixing the same rent for all lands in one area.

There is the usual implied covenant as to rent, and another against assigning in parcels.

Grants may be made wholly or temporarily free of rent.

Another Ordinance (No. 25) provides for the assessment by assessors of all lands in the island of Lagos.

Disease (Animals).—A short but comprehensive Law (No. 19) covers preventive measures (by rules) chiefly with respect to cattle and dogs, though the word "animal" is defined further as including "any kind of four-footed or *four-handed* beast." The scope of the rules indicates familiar provisions as to landing, quarantine, isolation, slaughtering, etc.

Intoxicating Liquor.—The provisions of Ordinance No. 24 may be affected by the Report about to be issued by the Royal Commission. It is confined to "on-licences," which may be either bar licences (*i.e.* all liquors), wine and beer licences, or occasional licences. Objections to the grant of a licence may be made by officers of police, municipal boards, or friendly societies, or by the minister of a place of worship within one hundred yards of the premises. The closing hour is 10.30 p.m.; on Sundays the hours for business are noon to 1 p.m. and 8 to 10 p.m.

Infectious Disease.—An Ordinance (No. 28) provides with appropriate stringency for dealing with plague, cholera, and yellow fever. Towns or areas declared to be infected may be required to be evacuated. Houses may be disinfected, and if necessary destroyed. Persons having been in contact with infected persons may be segregated. Large powers of regulation are also given to the Governor.

Destitute Immigrants.—Where seamen or other persons arrive or are left in the Colony unprovided for, the master of the ship or other employer becomes liable for his hospital expenses and cost of his repatriation (No. 30).

VII. EAST CENTRAL AFRICA.

[*Contributed by* Albert Gray, Esq., K.C.]

1. EAST AFRICA.

Ordinances passed—18.

Judgments Extension.—Powers are given as respects the execution of decrees and warrants in civil cases coming from Zanzibar or Uganda within East Africa. Reciprocal powers are also given in the other Protectorates. The same convenience prevails throughout the West African Colonies. (No. 2.)

Fish Protection.—The effect of No. 3 is to take fish out of the Game Ordinance of 1906, and to enable the Governor to make such rules as he thinks fit for the protection of fish. All matters may be regulated, boats and nets registered, and close seasons established. The form of nets also may be prescribed.

Disease (Animals).—Under the Diseases of Animals Ordinance, 1906, places may be proclaimed infected or suspected areas, but this provision seems to have been ineffective owing to the absence of fencing. Power is now taken by No. 5 by the Government to fence any farm at its own cost, or to fence a farm at the owner's expense with his consent. When the Government fences, the owner can afterwards purchase the fence. When an owner fences or purchases the Government fence, he can recover half the cost from the neighbouring owner.

Railway Servants.—A Provident Fund is established for all railway servants who are not qualified for pensions (No. 7).

Cotton Cultivation.—A Law similar to that of Uganda is passed for this Protectorate (No. 8).

Wireless Telegraphy.—No. 9 is a similar law to that passed for Somaliland.

Land Registration.—Considerable doubts seem to have arisen with respect to titles to land in this Protectorate, and it is now found necessary to establish a Land Registration Court in order that titles may be proved and certified. A Recorder of Titles presides over the Court, who must be a barrister or solicitor of five years' standing. An appeal from his decisions lies to the High Court. The Ordinance may be applied to districts by proclamation, and all claims to land within such a district must be lodged within twelve months. All land not thus claimed is to be deemed Crown land, though adverse claims may be brought within twelve years. The Recorder gives a certificate of title, with a map if he thinks fit, and the boundaries are delimited. Any person aggrieved by anything determined by a certificate may bring an action at law within twelve years.

Identification of Prisoners.—Provision is made for identification by finger-prints, as in other colonies (No. 12).

Jury.—East Africa by No. 17 abandons the provisions of the Indian Code as to unanimity of juries, and reverts to English practice. The Indian Code provides that the jury may state their verdict or that of the majority, that the judge may then require them to deliberate further, that if they are not then unanimous, and there is a majority of six, the judge, if he agrees with the majority, gives judgment accordingly; if he does not, he must discharge the jury. In future there must be unanimity or discharge, as in England.

2. UGANDA.

Ordinances passed—18.

Fumigation of Plants.—All plants imported into the Protectorate must be fumigated under the supervision of the botanical authority (No. 2).

Sleeping Sickness.—Power is taken to proclaim districts or places to be infected places, and rules may be made for the regulation of intercourse between those places and the rest of the Protectorate (No. 4). The Rules made show the Sesse Islands to be the chief seat of danger, vessels not being allowed to go thence to any other island, and being allowed to land on the mainland only at two isolated places. No person is allowed to go to an infected place except by special permission, and employers are not allowed to hire labourers from any such place, unless they are certified as free from the sickness.

Cotton Cultivation.—Rules may be made for improving the quality of cotton, prohibiting the use of inferior seed, the exportation of inferior cotton, and the use of improper modes of preparation. From the Rules issued, it appears that the Government supply approved seed, which must be used.

Church of England.—The tenure of Church property in the Protectorate is provided for in No. 6. In each place the land and other property is to be held by an incorporated body of three trustees, one being the Bishop, the other two being nominated by the Governor and Bishop respectively. They must not hold more than two acres of land, save with the Governor's consent.

Foreign Deserters.—Provision is made by No. 8 for the rendition of deserters from foreign ships, where the Governor is satisfied that due facilities will be or are given by the Government of the foreign country for the rendition of deserters from British ships.

Fugitive Criminals.—The extradition of fugitive criminals is provided for in an Ordinance (No. 9) of normal character.

Identification of Prisoners.—No. 10 authorises the taking of finger-prints in the case of all persons in the lawful custody of the police.

Registration of Titles.—The registration of documents relating to land is somewhat complicated by the institution of a new Land Registry, applicable to all "Crown grants of land hereafter made, and all final certificates of title hereafter given to native owners." Only the titles in these lands are to be registered, and when once entered, all subsequent dealings with these lands are to be registered here. The Registration of Documents Ordinance, 1904 (noticed in our Review for that year), is not to apply in the case of documents required to be registered under this Ordinance. The reason for this new departure may be that the registration under the Law of 1904 was only obligatory under penalty of a fine, whereas under the present Law no evidence is to be receivable in any civil court with

respect to any sale or transfer of registered Crown lands unless it is registered.

Wireless Telegraphy.—No person shall use or establish any apparatus or installation for operating wireless telegraphy without a licence from the Governor (No. 12).

Designation of Officers.—Following the example of East Africa, Uganda now designates its chief officers, Chief Secretary to Government, Provincial Commissioner, District Commissioner, and Assistant District Commissioner (No. 14).

Deportation.—The Uganda Government find it necessary to re-enact, in a modified form, the power of deportation formerly in force under the Orders in Council. The Governor may order the deportation of any person from one part of the Protectorate to another, if he is conducting himself so as to be dangerous to peace and good order, or is intriguing against His Majesty's authority (No. 15).

Goods in Transit.—Goods in transit are declared to be, and to have always been, subject to the export duties levied in the Protectorate (No. 18).

3. SOMALILAND.

Ordinances passed—8.

Foreign Deserters, Wireless Telegraphs, Fugitive Criminals.—Similar laws to those noticed under Uganda are enacted (Nos. 2, 6, 8).

The other Ordinances do not call for remark.

4. NYASALAND.

Ordinances passed—19.

Infectious Disease.—Notification of the existence of infectious disease is required from heads of families, employers of labour, native chiefs, and medical practitioners. The list of diseases to which the law applies includes (besides those familiar to us) sleeping sickness, beri-beri, yaws leprosy, plague, and yellow fever (No. 2).

Probate.—Probate granted in the U.K. may be sealed in the High Court and shall then operate as if granted by that Court (No. 3).

Town Councils.—Power is taken to constitute town councils for the sanitary government of the townships to which the Ordinance may be applied. The council will exercise all the powers of the Governor under the Township Regulations of 1897, and in addition they may make rules and regulations with regard to lighting, water supply, street traffic, nuisances, infectious disease, and other matters of a sanitary or municipal character.

Punishments.—A number of miscellaneous provisions relating to punish-

ments are usefully comprised in one Ordinance (No. 8). First are set out the punishments which Courts according to their competence may award. Imprisonment with hard labour is substituted for penal servitude. Persons convicted of offences may be required to make compensation to persons injured by the offence, and to pay the cost of prosecution. Then follow the powers of modification of sentences, the limitations upon flogging and whipping, the scale of imprisonment in lieu of fine, and a scale of increased punishment for repetition of crime.

Deportation.—A power to deport from one district to another is given in similar terms to those of the Uganda Law, but here the power is confined to the case of natives (No. 9).

Wireless Telegraphy.—No. 12 is a Law similar to that of Uganda and Somaliland.

Firearms.—Two Ordinances deal with this subject (Nos. 6, 15). The first makes full provision for licences to deal in and to possess firearms. Under the second, Residents are prohibited from issuing licences to natives except under the authority of the Governor.

Vaccination.—Compulsory vaccination is prescribed in the usual manner in an Ordinance (No. 16) of nineteen sections, which disclose no recognition of the "conscientious objector."

Military.—Two Ordinances (No. 18 and 19) provide for the Constitution of a Volunteer Reserve, and a reserve for the King's African Rifles.

VIII. SOUTH ATLANTIC.

[*Contributed by* Edward Manson, Esq.]

1. FALKLAND ISLANDS.

Ordinances passed—9.

Gun Licences (No. 2).—No one, after July 1, 1908, is to use or carry a gun on the Islands without a licence. Licences must be produced on demand. The penalty for using or carrying a gun—elsewhere than in a dwelling-house or the curtilage thereof—is £5. There are exceptions in favour of persons in the naval and military service, or acting as common carriers.

Wild Birds (No. 4).—A close time is created for certain scheduled wild birds. These are duck, grebe, mallard, snipe, swan, teal, and widgeon. The penalty is £1 per bird shot or snared.

Whales (No. 5).—No one is to kill, take, or hunt any whale in the waters of the Colony unless duly licensed. The cost of a licence is £100.

Owners or masters of vessels permitting any person belonging to the vessel to be employed in killing whales without a licence are to forfeit any whale so killed. Derelict whales may not be appropriated except with the sanction of the Governor in Council.

Interpretation (No. 6).—The common law, the doctrines of equity, and the statute of general application in force in England on May 22, 1900, are to be in force in the Colony, but so far only as the circumstances of the Colony and its inhabitants permit.

Quarantine (No. 7).—This Ordinance amends the existing law and has appended to it Quarantine Regulations with an interpretation clause defining such terms as "infected place," "infected ship," "suspected ship," "surveillance," and "observation," dealing with the matter in great detail.

Dependencies of the Colony (No. 9).—The Falkland Islands have certain dependencies—groups of islands known as South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands, and the territory known as Graham's Land. The object of this Ordinance is to apply the common law, the doctrines of equity, and the statutes of general application which were in force in England on May 22, 1900, to these dependencies, subject to all local Ordinances and to Orders in Council for the time being in force, with such qualifications as local circumstances render necessary. Ordinances of the Colony may from time to time be applied to the dependencies by the Governor in Council by notification in the *Gazette*. The jurisdiction of the Supreme Court is extended to the dependencies.

Supply.—Nos. 1, 3, and 8.

2. ST. HELENA.

The Ordinances this year are not of any special interest.

Sunday Closing (No. 1).—The Governor in Council may by notification fix the occasions and hours on which the markets and shops shall be closed on Sundays.

Wild Birds (No. 4).—The holder of a licence may take or kill any wild birds specified in s. 4 of the principal Ordinance—No. 1 of 1894—during all the months of the year excepting February, March, September, and October.

Fruit Importation (No. 5).—Any person may now import fruit from South Africa. The prohibition is repealed.

Road Tax (No. 6).—Every able-bodied male person between eighteen and sixty—with certain exemptions—is to pay a three-shilling road tax in each year in two equal instalments.

Supply.—Nos. 2 and 3.

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq., K.C., M.P.]

Government Annuities for Old Age (No. 5).—Any person domiciled in Canada may, under this Act, purchase from the Government an immediate or deferred annuity depending on a single life or on the joint continuance of two lives, by payment at any time of a sum of not less than 10 dollars. Any depositor in a Post Office Savings Bank may get any of his savings transferred for this purpose. Employers of labour may purchase annuities for their employees. An annuity is not to be granted for an amount of less than 50 dollars or more than 600 dollars a year. The interest in an annuity is—wisely—made not transferable, and is not seizable for bankruptcy or insolvency, except where purchased with intent to defraud creditors. In case of death before the annuity becomes payable, the moneys paid for it are repayable to the heirs of the annuitant with interest at 3 per cent.

Telegraphic News (No. 12).—A grant is made under this Act for an efficient service of telegraphic news from Great Britain for publication in the Canadian Press. The service is to be open to all newspapers published in Canada, and not less that one-half of the cost of maintaining the service is to be paid by the proprietors of the newspapers participating in the benefits thereof.

Dominion Lands (No. 20).—The lands in question are in Manitoba, Saskatchewan and Alberta, and the North-West Provinces. All such unoccupied surveyed agricultural lands are to be open to entry for homesteads. Every person who is the sole head of a family, or a male of the age of eighteen years and a British subject, is to be entitled to obtain entry for a homestead of 160 acres; women also who can establish this status as sole head of a family. Every entrant for a homestead must, before letters patent are issued to him, have (*a*) held the homestead for three years for his own exclusive use and benefit; (*b*) resided thereon for at least six months in each of the three years; (*c*) erected a habitable house; (*d*) cultivated such an area of land in each year as is satisfactory to the Minister; and (*e*) be a British subject.

No charge of any nature (except for seed grain advances or indebtedness to the Crown) may be created upon a homestead: assignments are to be null and void unless the Minister otherwise declares.

There are numerous other provisions relating to grazing hay and marsh lands, irrigation and water power, mineral lands, quarriable stone, school lands, timber berths, slides, streams, and lake fronts.

Juvenile Delinquents (No. 40).—Few institutions have spread more rapidly than Children's Court.

Under the present Act all children when arrested are to go before the Juvenile Court. Children means boys or girls apparently or actually under sixteen. Notice of a charge is to be given to parents, guardians, or relatives. The trials are to be held in the judge's private office, and no names are to be published. Where a child is proved a juvenile delinquent, the Court may impose a fine (to be paid by the parent) or commit the child to the care of a probation officer, or allow it to remain at home subject to the visitation of a probation officer, or may send it to a foster home or the care of a children's aid society or industrial home. In any such case the parent may be ordered to contribute to the support of the child. The child remains a ward of the Court. No child is under any circumstances to be incarcerated in any penitentiary, jail, or police station.

The Juvenile Court Committee is to consult with the probation officers with regard to juvenile delinquents and advise the Court as to the best method of dealing with such children. Every probation officer is to have the powers of a constable.

Opium (No. 50).—The importation and sale of opium for other than medicinal purposes are made an indictable offence punishable with imprisonment for three years.

Patent Medicines (No. 56).—Every manufacturer or importer of proprietary or patent medicines must obtain a certificate of registration from the Minister of Inland Revenue. Every such patent medicine must have its registered name and number on the label.

No proprietary or patent medicine is to be made or sold which contains cocaine, excess of alcohol, or any drug scheduled to the Act. Samples may be taken and analysed.

National Battlefields at Quebec (No. 57).—Provision is made for acquiring and preserving these, and for a celebration of the tercentenary of the founding of Quebec by Champlain.

Miscellanous.

Auditor-General, the office of (No. 7).
Bank Act (R.S. 1906) amended (No. 7).
Bills of Exchange Act amended (No. 8).
Boards of Trade Act (R.S. 1906) amended (No. 9).
Canned Goods Act repealed (No. 13).
Court of Appeal in winding up (No. 10).
Chinese Immigration Act amended (No. 14).
Civil Service Act amended (No. 15).
Companies Act (R.S. 1906) amended (No. 16).
Copyright Act (R.S. 1906) amended (No. 17).
Criminal Code amended in some small particulars (No. 18).
Customs Convention with France (No. 28).

Customs Act (R.S. 1906) amended (No. 19).
Dairy Products, inspection of (No. 35).
Dominions Election Act amended (No. 26).
Exchequer Court Act amended (No. 27).
Foods (No. 47).
Gold and Silver Marking (Nos. 29, 30).
Grain, inspection of (No. 36).
Immigration: power to prohibit any specified class (No. 33).
Inland Revenue (No. 34).
Irrigation amendment (No. 38).
Judges Act amendment (No. 39).
Land Titles (No. 41).
Naturalisation amendment (No. 48).
Post Office amendment (No. 53).
Prisons and Reformatories amendment (No. 55).
Supply (Nos. 1 and 2).

2. BRITISH COLUMBIA.

[*Contributed by* J. A. Simon, Esq., K.C., M.P.]

Acts passed—62: Public, 56; Private, 6.

Dentistry (No. 2).—This is an illustration of the growing tendency to organise professions. It incorporates the persons by law authorised to practise dentistry or dental surgery in the Province under the title of the College of Dental Surgeons, with a Council and officers. A register of members is to be kept, and only those whose names are entered therein and have taken a certificate are to be allowed to practise. Members convicted of an indictable offence may be erased from the register. A list of the members is to be published annually. A member of the College is exempt from jury service.

Sale of Goods (No. 7).—A purchaser of a stock of goods in bulk is required to obtain from the vendor a statutory declaration in the form annexed to the Act of his—the vendor's—creditors: otherwise the sale is to be fraudulent and void against such vendor's creditors.

Salmon Canning (No. 9).—No one in future is to carry on a salmon cannery business without obtaining an annual licence. The fee for a cannery is $100. Salmon "includes all kinds of fish known as sockeyes, red and white springs, humpbacks, pinks, dog salmon, cohaes, and sleet-heads."

Companies (No. 11).—Directors in England as well as in the Province

are sometimes made personally liable on bills of exchange where the name of the company has been inadvertently omitted. This is a short proviso to remedy the grievance where there was no fraud and the intention was that the signature should bind the company.

Constitution (No. 12).—This, among other amendments, fixes the sessional allowance of each member of the Legislative Assembly of the Province at $1,200.

Factories (No. 15).—This is an Act of a kind with which we are now quite familiar, directed especially to the protection of child, girl, and young women employees. No child, *i.e.* boy under fourteen or girl under fifteen, is to be employed except in canning fish or packing fruit. No young girl or woman is to be employed in such a way that her health is likely to be permanently injured, on peril of six months' imprisonment to the employer, or a fine of $100. It *is* employing her to the permanent injury of her health if the young girl or woman is employed for more than eight hours a day, or is given less than an hour at noon for meals or has to take them in a room where a manufacturing process is being carried on.

A young girl or woman is not to be allowed to clean any part of the machinery of a factory while the machinery is in motion. All dangerous machinery is to be fenced.

Overcrowding is prohibited. Cleanliness and ventilation required. Means for the extinction of fire are to be provided.

Female inspectors are to be appointed, and their powers and duties are defined.

Judgments (No. 26).—Immediately on any judgment being entered a certificate of the judgment under the seal of the Court may be registered in any Land Registry Office in the Province and is thereupon to create a lien on all lands of the debtor within the Land Registry District. Machinery is provided for enforcing the lien.

Crown Lands (No. 30).—This is an important Act of 133 sections, consolidating the law on the subject. It provides a system of survey, deals with Pre-emption and Sale of Crown Lands, Crown Grants of Subsidy Lands, Sale of Town or City Lots, Rights-of-Way, Free Grants, Educational Endowments, Leases, Timber Lands, Reserves, Highways, Free Miners' Rights, Reservation of Coal and Petroleum, and Removal of Trespassers. Numerous forms are annexed.

University of British Columbia (No. 53).—A University to be called "The University of British Columbia" is established for the Province, with a Chancellor, a Convocation, Board of Governors, Senate and Faculties, and the functions of each are defined and declared. The University is to be non-sectarian, and is to make full provision for the education of women "in such manner as it shall deem most fitting: provided, however, that no woman by reason of her sex shall be deprived of any advantage or privilege accorded to male students of the University."

MISCELLANEOUS.

Attachment of Debts Act, 1904, amended (No. 4).
Bills of Sale Act, 1905, amended (No. 6).
Bush Fires, Prevention of (No. 17).
Coal Tax Act amended (No. 49).
Cemetery Sites (No. 10).
Elections in Municipalities (No. 14).
Farmers' Institutes Act, 1897, amended (No. 3).
Game Protection (No. 18).
Immigration (No. 23).
Judicature—Sittings of Court (No. 13).
Jurors Act amended (No. 27).
Labour Regulation Act amended (No. 28).
Land Registry Act amended (No. 29).
Liquor Licences Act amended (No. 32).
Master and Servant Act amended (No. 33).
Municipal Clauses Act amended (No. 36).
Municipalities Incorporation Act amended (No. 35).
Oaths Act amended (No. 1).
Placer Mining Act amended (No. 34).
Public Service (No. 40).
Public Work Department (No. 41).
Railway Assessment Act amended (Nos. 50, 51).
Revenue Act amended (No. 42).
Settled Estates Act amended (No. 43).
Shops Regulation Act amended (No. 44).
Special Surveys Act amended (No. 45).
Succession Duty Act amended (No. 46).
Summary Convictions Act amended (No. 47).
Supply (No. 48).
Timber Measurement Act amended (No. 52).
Water Clauses Act amended (No. 56).

3. PROVINCE OF MANITOBA.

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—Public, 68; Private, 11.

Judicature (Nos. 11, 12, 13, and 14).—These Acts amend the King's Bench Act; No. 11 relating to the obtaining of evidence for use before foreign tribunals, and No. 12 limiting the amount of costs recoverable for the unsuccessful litigant. In the King's Bench this amount is $300, inclusive of counsel's fees, but exclusive of disbursements. In the Appeal

Court the amount is $100. In certain cases the Courts can augment these amounts.

Education (No. 17).—This Act creates a Department of Education, with power to provide elementary education in districts where there are no schools organised under the Public Schools Acts. An Advisory Board is also created to (*inter alia*) make regulations as to school premises, authorise the books to be used in schools and in school libraries, determine the qualification of inspectors and teachers, and prescribe the form of religious exercises to be used in schools.

Insurance (No. 23).—This amends the Manitoba Insurance Act by allowing the licensing of special brokers to procure policies from companies which are not authorised to carry on business in this Province.

Liquor Traffic (No. 26).—This amends the Liquor Licence Act in many ways. It allows the question of local option to be brought before the electors every year. It forbids the service of meals or singing in the bar-room of an hotel. Retail druggists may not sell more than six ounces of liquor on a doctor's prescription, and a fresh prescription is required for every sale. On being convicted of drunkenness six times in one year, a person may be imprisoned for a year with hard labour. In districts where a local option bye-law is in force, the regulations are more stringent. Even persons under twenty-one may not be given liquor except as medicine. Veterinary surgeons are allowed one gallon for the health of their dumb patients, and no other restriction is placed on the amount they may prescribe for that purpose. The Act also makes it an offence to drink the liquor prescribed for, and placed in the bedroom of, a sick person.

Motor Traffic (No. 34).—The Motor Vehicle Act provides for the registration and marking of motor vehicles. Besides having a number on the back and front, the car must have a number on the glass of the two head-lights. Chauffeurs have also to be registered. The speed regulations are shortly as follows: On public highways, not greater than is reasonable or proper, having regard to the traffic or use of the highway, or so as to endanger or to be likely to endanger life, a limb, or the safety of property. In closely built-up business portions of cities, towns, and villages, not exceeding ten miles an hour; at corners, etc., six miles. In residential portions of an incorporated city, town, or village, fifteen miles an hour. Males under sixteen and females under eighteen may not drive a motor in public. Every motor must be fitted with a muffler, which must not be cut off in the thickly settled or business portions of any city or town. This Act also legislates as to the rule of the road. An overtaken motor must give way to one overtaking which wishes to pass by turning to the right of the centre of the road. In case of loss or damage caused by a motor, the onus of proof as to no negligence is cast on the owner or driver of the motor. Penalties for violation of the Act are up to $25 and costs for

the first offence, and $50 for subsequent offences; and in default of payment the motor may be impounded till the fine is paid. Three convictions in one year may entail the cancellation of the certificate of registry.

Municipal Finance (No. 37).—The Municipal Audit Act provides as to the audit of the accounts of every municipality in this Province, and a uniform system of keeping the municipal accounts is enforced on the municipalities, and this is subject to the audit of auditors appointed under the Act.

Agriculture (No. 46).—This amends the Noxious Weeds Act, 1906, so far as it relates to Canada thistle and perennial sow-thistle. These must now be cut down and destroyed before July 31st by every landowner, including municipalities and railways. Inspectors are appointed to enforce the Act, who have power, in default of the landowners, to enter and destroy the weeds.

Appropriation (Nos. 84, 85).—These Acts provide $2,994,162.08 for the government of the Province till December 31, 1908.

Telephones and Telegraphs (No. 53).—The Manitoba Telephone and Telegraph Act creates a department of the Government, presided over by the Minister of Telephones and Telegraphs. The Act defines the powers of the department, especially with regard to the construction and operation of lines for the transmission of messages by telephone or telegraph.

Local Acts.—Amongst the Public Acts are several which in the United Kingdom would be classified as Local. The most notable is the St. Boniface City Charter Act, consisting of 913 sections.

4. PROVINCE OF SASKATCHEWAN.

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—Public, 38; Local and Parish, 22.

Appropriation (No. 1.)—Provides $4,104,157.77 for the service of the Province to February 28, 1909.

Elections (No. 2).—The Saskatchewan Election Act in 285 sections provides a code for the government of elections for members of the Legislative Assembly. The qualification for a vote is based on residence for one year in the Province, and the vote can only be exercised by males of full age being British subjects; but judges of the Supreme and District Courts, Chinamen, Indians, and certain other persons are disqualified from voting. The vote is secret and by ballot-paper.

Electoral Divisions (No. 4).—Amends the Legislative Assembly Act by dividing the Province into forty-one districts and defining their boundaries.

Railways, Telephones, and Telegraphs (Nos. 5, 6, 7).—No. 5 creates a department of the Public Service called the Department of Railways,

Telegraphs, and Telephones, to carry out the provisions of the Railway Act, and to construct and work the telegraph and telephone systems belonging to the Government.

No. 6 empowers municipalities to own and work telephone systems in their districts, and to raise money for that purpose.

No. 7 enables five or more persons who wish to construct and operate a rural telephone for their material benefit to be formed into a company for that purpose. In certain events the company may extend their service to fresh subscribers.

Liquor Traffic (No. 14).—The Liquor Licence Act (*inter alia*) defines the licences that must be taken out for the sale of liquor, the accommodation to be provided in licensed hotels, and the precautions to be taken against fire in such places. The hotel licence in cities is $400, in towns $300, and in villages and rural localities $250. The wholesale licence in cities is $400 and elsewhere $200. Liquor may not be supplied by a licensee to any persons under eighteen; and males under twenty-one, and all females except a licensee or the wife of a licensee, are prohibited from serving liquor on any part of the licensed premises. If a person while in a state of drunkenness commits suicide, is drowned, or perishes from cold or other accident occasioned by such intoxication, the person who supplied the liquor is liable to the legal representatives of the diseased in $100 to $1,000. When local option byelaws are in force, licences for the sale of liquor cannot be granted.

Municipal Finance (No. 15).—This creates a department called the Department of the Municipal Commissioners. The chief duty of this department is to see to the proper inspection and audit of the accounts of the municipalities in this Province.

Local Government (Nos. 16, 17, 18).—The City Act in 413 sections, the Town Act in 406 sections, and the Village Act in 270 sections, provide a code for the local government of cities, towns, and villages respectively.

Education (No. 19).—The Free Text-book Act enables the Board of a school or the Commissioner of Education to supply text-books free of cost to the pupils, and to make regulations for the care and use thereof.

Workmen's Liens (No. 21).—The Woodman's Lien for Service Act gives all persons whose wages do not exceed $3 a day a lien for services performed in connection with any logs or timber, and the logs or timber may be seized, except when in transit by water, to satisfy the lien.

Children (No. 31).—The Children's Protection Act empowers the incorporation of societies for protecting children from cruelty, and the State Governor in Council may appoint an officer as superintendent of neglected children, whose duty it is to encourage and assist in the establishment of such societies, to inspect homes and shelters for neglected children, and generally to see that this Act is enforced. Children under sixteen who are found leading a life in certain circumstances specified in the Act may be arrested and

placed in industrial homes and refuges, or handed over to the care of a society willing to bring up and educate such children. The extreme penalty for cruelty to children is $100 and three months' hard labour.

Railway Taxation (No. 32).—This authorises the taxation of railways operating in the Provinces as follows: Where railway in operation for over seven years, three per cent. of gross earnings; where in operation five years to seven years, one and a half per cent. of gross earnings. Railways paying the tax are exempt from all other taxes, except the frontage taxes imposed by the Corporations Taxation Act.

Statute Law (Nos. 37, 38).—Provides for the consolidation of the Statutes and for various small amendments of previous legislation.

5. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—146; of which 77 were Local or Private.

Election Law.—No 2 is the Representation Act which comes into force after the end of the present Legislative Assembly. It provides that the Legislative Assembly of the Province shall consist of one hundred and six members, one representative to be elected for each of the electoral districts enumerated in the schedules, except the city of Toronto, which is to have two members for each of its four divisions.

No. 3 is the Ontario Election Act, which consolidates and amends in certain minor details the previous legislation with regard to the conduct of elections. Women are still included among those disqualified from voting. The supply or the wearing of any ensign, standard, set of colours, flag, ribbon, label, or the like favour as a party flag or badge within the electoral district on nomination day or polling day, or within eight days before such last-mentioned day, or during the continuance of the election, is forbidden.

No. 4 is the Controverted Elections Act, which consolidates and amends in certain details the law on the subject. The new provisions are not of great importance.

Legislative Assembly.—No. 5 is the Legislative Assembly Act, which consolidates and amends the previous legislation dealing with this subject. Among the new or amended provisions are the following: Aliens and senators and members of the House of Commons of Canada are ineligible as members of the Assembly. Contractors for the loan of money to the Government or for securities for the payment of money to the Government under the authority of the Legislature after public competition, or respecting the purchase or payment of the public stock or debentures of Ontario on terms common to all persons, are not thereby ineligible for election as members of the Assembly.

Executive Council.—No. 6 consolidates previous legislation on this subject.

Public Inquiries.—No. 8 enables the Lieutenant-Governor in Council to appoint a person or persons to conduct a public inquiry into any matter connected with or affecting the good government of Ontario.

Audit of Public Accounts.—No. 9 consolidates and amends in minor details the legislation on this subject.

Provincial Loans.—No. 11 authorises a loan of $4,000,000 for public purposes; and No. 12 consolidates previous legislation as to the raising of such loans.

Supplementary Revenue.—No. 14 consolidates the law as to taxation of various public companies; and No. 15 amends the Act of 1907 in certain details.

Public Lands.—No. 16 empowers the Minister for Lands, Forests, and Mines, on a report to him that the lands in any township being Crown lands not reserved from settlement, are not valuable for their mines or minerals, but are agricultural lands suitable for cultivation and settlement, to open such lands for sale for agricultural purposes to actual settlers, who are to be entitled to any mines and minerals therein, and the patents for such lands when issued are to contain a grant of the mines and minerals. He may also declare purchasers entitled to minerals in lands already granted.

No. 17 enables the same Minister to make the like order in the case of lands not valuable for their pine-trees or their mines and minerals; but the grantee is not to be entitled to cut and dispose of the pine-trees thereon except for building, fencing, and in the course of actual clearing, until he shall have been six months in residence with a house of the dimensions of 16 by 20 feet erected and six acres cleared and under crop.

Mines.—No. 21 consolidates the previous legislation as to mines, their administration and working. New provisions are the following: the Minister may revoke the licence of any licensee guilty of a wilful contravention of the Act, and no licence is thereafter to be granted to such person without the Minister's authority. Mining may be prohibited or only carried on under restrictions on timber lands. There are also certain new provisions as to the procedure before the mining commissioners and as to appeals from their decisions.

Highways.—No. 23 amends the Act for the improvement of public highways by providing that where a by-law has received the assent of two-thirds of the members of the county council it shall not be necessary to submit the same to the electors of the county.

Registration of Births, Marriages, and Deaths.—No. 28 consolidates and amends the law on this subject. The provisions as to the giving of notices to the registrar are amended in certain details.

Statute Law Amendment.—No. 33 amends the law in various particulars.

Police Magistrates.—S. 27 provides that in cities having a population

of 18,000 or over, the salary of the Police Magistrate is not to be less than $2,000 where he does not practise. From and after December 31, 1908, no police magistrate in any such city is to be allowed to practise as a barrister or solicitor while holding such office.

Inquests.—S. 29 enables the evidence at inquests to be taken in shorthand; and s. 30 provides for the employment of interpreters at inquests and in criminal cases.

Gas Companies.—S. 44 provides for the regulation of the report of natural gas.

Schools.—S. 53 provides that a school site is not to be selected in any township within one hundred yards of any garden, orchard, pleasure-ground, or dwelling-house without the consent of the owner thereof, unless in the opinion of the school inspector no other suitable site is available. S. 54 deals with the grant of retiring allowances to teachers and inspectors.

Judicature.—No. 34 amends the Judicature Act as to the procedure to be followed where it is desired to quash orders of inferior Courts.

Law Society.—No. 39 deals with the election of benchers of the Society.

Pharmacy.—No. 40 prohibits the sale by retail or the furnishing or disposing of alkaloid cocaine or its salts or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine except upon the written prescription of a legally qualified medical practitioner, which prescription is to be retained by the person selling or furnishing the drug. The prescription is not to be filled more than once and no copy is to be given by the person who has the custody thereof. Those drugs are not to be sold by wholesale except to pharmaceutical chemists. Records of sales are to be kept.

Chartered Accountants.—No. 42 regulates the constitution of the Institute of Chartered Accounts of Ontario.

Companies.—No. 43 amends the Companies Act in various details.

Railways.—No. 44 provides, *inter alia*, for the fencing of lines adjoining highways.

No. 45 amends the provisions of the Railway Act, 1906, as to arbitration.

Municipalities.—No. 48 amends the Consolidated Municipal Act, 1903, in a number of details.

Municipal Telephones.—No. 49 enables municipal councils to establish a local telephone system at the cost of the subscribers.

Motor Vehicles.—No. 53 provides for the licensing of drivers. No person under seventeen is to drive a motor vehicle on a public street or highway. The driver is to stop his vehicle on meeting or overtaking a funeral procession.

Liquor Licences.—No. 54 amends the Liquor Licences Act by prohibiting sales between 7 p.m. on Saturday and 6 a.m. on Monday except where a requisition for medical purposes signed by a duly qualified medical practitioner is produced by the sender or his agent. Formerly, such a requisition might have been signed either by a medical practitioner or

by a justice of the peace. During closing hours and on polling days liquor can only be supplied upon a similarly signed requisition. The Act also imposes penalties upon inebriates procuring liquor.

Milk, Cheese, and Butter.—No. 55 consolidates the legislation dealing with the sale of such commodities.

Bread.—No. 56 regulates the weight and sale of bread. Notwithstanding that any loaf weighing less than the proper weight is subject to seizure, the person making the same is not to be liable to any other penalty for short weight unless any ten loaves made by him, which an inspector may select, when weighed together fall below the aggregate of the full weight required by the Act. Breaches of the Act are punishable by fine.

Shops.—No. 58 forbids the employment of children during school hours unless such children produce certificates.

Neglected Children.—No. 59 is the Children's Protection Act. "Child" is defined as meaning a boy or girl actually or apparently under sixteen. Former legislation as to the provision of children's shelters, as to the apprehension of neglected children, the selection of foster homes, the dealing with juvenile offenders, etc., is consolidated and amended in details.

Egress from Public Buildings.—No. 60 deals with this subject, and adds schoolhouses of more than one story in height to the list of other public buildings the doors of which are to be hung so as to open outwards. Cinematograph exhibitions are brought under control.

Noxious Weeds.—No. 62 imposes upon overseers of highways the duty of seeing that noxious weeds are cut down and destroyed at the proper time to prevent the ripening of the seed.

Game and Fisheries.—No. 65 amends the Game and Fisheries Act in certain details.

Education.—No. 66 amends the Department of Education Act.

No. 67 amends the Public Schools Act. It enables the school authority where there is no high school to establish continuation schools. It also deals with the establishment and administration of central schools.

6. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Bees (No. 26).—The Minister of Agriculture, whenever he has reason to suspect that certain apiaries are infected with any contagious disease, may appoint a competent person to inspect and treat the bees. Hives which cannot be effectually disinfected may be destroyed.

Public Buildings (No. 52).—"Public buildings" has here a wide meaning. It includes churches, chapels, seminaries, colleges, convents, monasteries, school-houses, hospitals, orphan asylums, charity workrooms, hotels, boarding-houses, theatres, halls for public meetings, lectures, or amusements, exhibi-

tions, racecourse stands, skating-rinks, cinematograph shows, buildings over offices, stores with more than ten clerks, and court-houses.

Every precaution is to be taken for the safety of such public buildings, especially against fire. No such buildings to be built or altered without a permit from the inspector. Theatres and halls must post up a certificate of inspection.

Every building of three stories and every school is to have safety appliances on the outside for escape in case of fire.

Every theatre is to be fireproof, and have a thick brick wall separating stage and auditorium, and a fireproof curtain. All theatres must be lighted with electric light.

Employers must provide seats for girl or women employees.

Hotels and boarding-houses are to keep night guardians.

Pupils in colleges, schools, convents, etc., are to be instructed in the use of fire extinguishers and safety appliances.

Inspection of Scaffolding (No. 53).—This provides for the appointment of inspectors of scaffolding. Any workman may require to see the inspector's certificate.

Insurance (No. 69).—This is the most important enactment of the year. It contains 238 sections, and deals with the incorporations of joint stock insurance companies, fire, life, marine, accident, guarantee. For each class of company it requires a certain capital stock. Mutual fire insurance companies are specially dealt with and their conversion.

Amending and other Minor Acts.

Agent-General for Province, appointment of, for United Kingdom (No. 11).

Celebration of the three hundredth anniversary of the founding of Quebec, and the establishment of civilisation upon the banks of the river St. Lawrence, by Samuel de Champlain (Nos. 2 and 3).

Companies, amendment of law (Nos. 64, 65, 66).

Co-operative Agricultural Associations, amendment of law (No. 28).

Dental Surgeons, amendment of law (No. 60).

Game Laws, amendment of (No. 25).

Jurors, indemnity to (No. 47).

Land Survey, amendment of law (No. 61).

Licence Law, amendment of (No. 19).

Marriage Licence Fees, amendment of law (No. 22).

Motor Vehicles Act, amendment of (No. 20).

Municipal Code, revision of (No. 8).

Notarial Code, amendment of (No. 58).

Physicians and Surgeons, amendment of law (No. 59).

Police Magistrates, amendment of law (No. 43).

Prison Inspection (No. 50).
Prison Labour, amendment of law (No. 23).
Public Lands, amendment of law (No. 24).
Railway Companies, subsidies to (No. 5).
Revised Statutes, incorporation of new Acts and Reports of (Nos. 7, 12).
Roads, subsidies for (No. 10).
Schools, grant to elementary (No. 4).
Sessions of the Peace, amendment of law (No. 42).
Stamps Act, amendment of (No. 21).
Stock-breeding Syndicates, amendment of law (No. 27).
Supply (No. 1).

7. NEWFOUNDLAND.

[*Contributed by* H. C. GUTTERIDGE, ESQ.]

Acts passed—6.

Education.—No. 1 amends the Education Act, 1903, by providing additional moneys for certain educational purposes.

Commerce.—No. 2 incorporates the Newfoundland Board of Trade. The objects of this institution are defined as follows: "To maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and disseminate commercial and economic information, and to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

Finance.—No. 3 authorises the raising of a loan of $430,000 by means of Debenture Bonds of the Colony.

No. 5 amends the Revenue Act, 1905.

No. 6 makes an appropriation out of the Consolidated Revenue Fund for the different branches of the public service.

Pensions.—No. 4 grants certain retiring allowances.

8. BERMUDA.

The review of this legislation will appear next year.

X. THE WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* HARCOURT MALCOLM, ESQ.]

The past session has been quite as arduous as the previous one, and although the number of Bills introduced was five less—that is, forty-five as compared with fifty—and the number of those passed six less—that is, thirty-three as compared with thirty-nine. The importance of the legislation of 1909 is quite as great as that of 1908. As in 1908 only one Bill was introduced in the Upper Chamber. This measure dealt with the constituting of a Court of Appeal. But as it reached the House late in the session, and as the proposal is one of vast importance to the entire Colony, yet not urgent, its consideration was postponed by the House, and it is very likely that it will be brought forward again during the next session. Of the forty-five Bills introduced into the House, thirty-three have become law. Only three of these were amended by the Council. Of the remaining twelve three were not proceeded with, one was laid aside after it had been returned from the Council with an amendment, and the second reading of the remainder was postponed for three months. Among the subjects with which these Bills dealt were the preparation of a new edition of the laws, the abolition of the death sentence in the case of children, the preparation of legal instruments, the publication of an Official Gazette, the acquisition of land for public purposes, wrecks, the protection of labourers, and the provision of pensions for the widows and orphans of public officers.

As for previous reports I have prepared (1) a *résumé* of all Acts passed; (2) a return showing origin and fate of Bills; and (3) a table showing the effect of the year's legislation on existing Acts.

Interpretation (No. 1).—The Interpretation Amendment Act, 1909, in addition to providing interpretations for various terms, also declares that where a penalty is imposed by an Act, the amount of such penalty is to be regarded as the maximum amount, and where a term of imprisonment is provided, such term shall be regarded as the maximum term and may be with or without hard labour.

Supply (No. 2).—The Appropriation Act, 1909, grants £27,723 2*s.* 2*d.* for the performance of public works and for payment of various claims against the Colony.

Tariff (No. 3).—The Tariff Amendment Act, 1909, makes various amendments and additions to the Tariff Acts of 1908.

Banks (No. 4).—The Banks Act, 1909, requires every bank incorporated outside the Colony to file in the office of the Registrar of Records a copy of

the Act, charter, or certificate of incorporation of such bank and also any further Act, charter, or certificate of incorporation, all of which documents are open to public inspection without the payment of any fee. The banks which are specified in the Schedule as well as any other bank which may be inserted in such Schedule may, until November 21, 1919, issue bank notes which must be secured by a deposit of coin or security with the Treasurer of the Colony. The minimum value of any note is four shillings, and in addition to being signed by certain officers of the bank the note must be counter-signed by the Treasurer of the Colony. In the event of the depreciation of the deposit of security, the Governor in Council may call upon a bank to make good such depreciation, and a bank may reduce the amount of its note issue and ask for a return of part of the security deposited. Annual statements have to be published and the Governor may at any time call for a special return. Power is given to make rules, and provision is made for the event of suspension of specie payments and the internal arrangements of the institution; dividends are required to be paid out of profits only. The charter of the Bank of Nassau is renewed for twenty-one years.

Jury (No. 5).—The Jury Act, 1909, is a comprehensive consolidation and amendment of the laws relating to jurors and trials by jury. Every man between the ages of twenty-one and sixty years who is (*a*) seized and possessed in fee simple, fee tail, or for life of landed estate within the Colony of the value of not less than £50; or (*b*) a householder and inhabitant or sole tenant upon an improved lot of land in the Island of New Providence of the value of not less than £100; or (*c*) in receipt of an annual salary of £60 and upwards; or (*d*) in receipt of an income derived from any source of not less than £100 per annum is qualified and liable to serve on juries in all civil and criminal proceedings triable before a jury. Members of the Legislature, Government officials, professional men and various others are exempted from jury service, while aliens, persons who have been convicted of treason, murder, felony or any infamous crime, or who are lunatics, idiots, habitual drunkards, or lepers or suffering from a contagious or infectious disease, are disqualified from jury service. Machinery is provided for questioning the qualifications of persons named in the jury list as well as for adding the names of those who may have been omitted. The method of drawing common juries has been changed by adopting the scheme of taking the names alternately from the top and the bottom of the jury list. If more than one person is summoned from the same place of business to serve at the same session, all such persons in excess of one may be excused for the session, but those so excused are obliged to attend at the next session. The right to challenge has been extended to misdemeanours, and the prosecutor and the accused may each challenge peremptorily ten jurors. Six grounds of challenge for cause are enumerated. A jury consists of twelve. In cases where the penalty of death is affixed to an offence, the jury must be unanimous, but in all other cases a two-thirds majority is sufficient. Special jurors

are provided for in both criminal and civil cases. In civil cases common jurors receive five shillings for each case and special jurors five shillings for each day. In criminal cases neither common nor special jurors are paid. A juror may be called as a witness.

Coroners (No. 6).—The Coroners Act, 1908, is 'a consolidation and codification measure. It provides for the appointment of coroners in the several districts of the Colony. In the Out-Islands every commissioner is *ex officio* coroner, but the Governor may appoint some other person coroner and may also appoint deputy coroners. Every coroner is invested with the powers of a magistrate, and he and his jury are subject to the jurisdiction of the Supreme Court in the same manner as English coroners and juries are to the High Court of Justice in England. All the common law rights of a coroner are preserved. He may inquire into the death of a person whose body is brought into his district in the same way as he might if such person had died in his district, although the death may have taken place beyond the limits of his district or even of the Colony. The Act imposes the duty on every person present at, or becoming aware of, a death calling for an inquiry to notify the fact to the coroner or the nearest police station. The Superintendent of the Bahamas General Hospital and every gaoler must notify the coroner of the death of any lunatic or any prisoner. All inquests must be forwarded to the Attorney-General. Provision is made for the summoning of medical and other witnesses, including prisoners. The number of the jury is reduced from twelve to seven and the verdict of four is sufficient. All freeholders and householders between twenty-one and sixty years are liable for service. An alien, or a person who has been convicted of treason, murder, felony or any infamous crime, or who is a lunatic, idiot, habitual drunkard, or a leper or a person suffering from a contagious or infectious disease, is disqualified. If a jury cannot be impanelled out of the twelve persons who have been summoned, the coroner may call upon bystanders to serve. The coroner and jury must view the body, unless he is of opinion that such view is not necessary for the purpose of the inquest, or that it would be dangerous to public health. The Act makes provision for all necessary forms.

Conveyancing (No. 7).—The Conveyancing Act, 1909, is composed of the provisions of the following Imperial Statutes, viz. the Vendors and Purchasers Act, 1874, and the Conveyancing Act, 1881 to 1892, with the exception of those portions which refer to trustees and mortgages, infants, and long terms.

Police (No. 8).—The Police Act, 1909, provides for the amalgamation of the police and constabulary forces; increases the strength of the combined force; makes the members pensionable; and provides generally for the police work of the Colony.

Firearms (No. 9).—The Revolvers Act, 1909, requires the possession of a licence in order to have a revolver or pistol in one's custody or possession.

Provision is made for the marking of revolvers and the registration of licences. Dealers must also be licensed. Power to search premises is given, and the Governor may exempt any one from the operation of the Act.

Pensions (No. 10).—The Pensions Act, 1909, is a consolidation with amendments of five Acts on the subject. The offices which are pensionable are set out in the Schedule, which may be added to from time to time. Salary does not include personal allowance, house allowance, etc. Officers may retire at sixty, but must have had ten years' continuous service in order to claim pension. Officers may be compulsorily retired at sixty. A pension which consists of one-sixtieth for each year of service must not exceed two-thirds of the highest salary drawn. Provision is made for gratuities in cases of retirement before reaching the age limit, if such retirement is caused by bodily injury or by infirmity of mind or body. But such pensioners are liable until they attain the age of sixty to be called upon to do service. Provision is made for the transfer to other parts of the Empire.

Cattle, Dog, and Pound (No. 11).—The Cattle Act, 1909, is a consolidation of nine Acts dealing with the questions of cattle, pounds, prairies, and dogs.

Cabs (No. 13).—The Cab Act, 1909, provides for the licensing of drivers as well as cabs; for the inspection of the cab, the horse, and the harness; the exhibition of fares and distances; the settlement of disputes; and generally for regulating the registration of hackney carriages and the licensing and conduct of drivers.

Commissions (No. 14).—The Commissions of Inquiry Act, 1909, empowers the Governor to appoint Commissions of not less than three persons to inquire into and report upon any matter. Witnesses may be summoned and if offending may be committed to prison. Evidence may be given on oath and false swearing is constituted perjury.

Out-Island Libraries (No. 15).—The Out-Island Public Libraries Act, 1909, provides for the creation of Library Boards; their constitution and method of election; the filling of vacancies; and the qualifications and powers of Trustees.

Quarantine (No. 16).—The Quarantine Act, 1909, empowers the Governor in Council to make rules prohibiting or regulating the landing of persons other than natives suffering from plague, cholera, yellow fever, smallpox, and trachoma.

Expiring Laws (No. 17).—The Expiring Laws Continuance Act continues thirteen Acts for ten years.

Health (No. 18).—The Health Amendment Act, 1909, gives the several Boards of Health power to make rules for the prevention and for preventing the spread of epidemic contagious and infectious diseases on shore as well as on ship-board.

Public Boards (No. 19).—The Public Boards Appointment Act, 1909,

requires all appointments to public Boards by the Governor to be made in March in every year to take effect on the first day of April in such year.

Records (No. 20).—The Register of Record Amendment Act, 1909, prohibits the reception for record of any deed executed on or after the first day of January 1910 unless it bears the signature, address, and occupation of the person drawing or preparing it.

Public Authorities' Protection (No. 21).—The Public Authorities' Protection Act, 1909, is a reproduction of the Imperial Public Authorities' Protection Act, 1893.

Evidence of Statutes (No. 22).—The Evidence Statutes Act, 1909, facilitates the admission in evidence of Statutes passed by the Legislature of the United Kingdom or of British Possessions and Protectorates.

Supreme Court (No. 23).—The Supreme Court Amendment Act, 1909, makes further provision in connection with the admission to the Bahamas Bar of members of the English, Irish, or Scotch Bars. It also extends the jurisdiction of the summary side of the Court from £50 to £100.

Slander (No. 24).—The Slander Act, 1909, is a blend of the Imperial Slander of Women Act and a local Act of 1857, which also applied to men.

Papers and Books (No. 25).—The Printing of Papers and Books Act, 1909, provides that the name of the printer shall be printed on all books, papers, etc., printed by him under a penalty of £100, and he must carefully preserve for one year, at least, one copy thereof under a penalty of £20. Every person publishing papers or books, etc., containing treasonable, seditious, immoral, blasphemous or indecent matter is liable to a penalty of £200, or defamatory matter £50.

Emigrant Labourers (No. 26).—The Emigrant Labourers' Protection Act, 1909, deals with the employment of persons resident in the Colony in places outside the Colony. It is a re-enactment of the Emigrant Labourers' Protection Act, 1907, with various modifications as to the liability of the employer, and the amount to be drawn by the labourer. It also empowers the Governor in Council to require from an employer a guarantee for the due performance of any contract.

Marriage (No. 27).—The Marriage Amendment Act, 1909, as well as correcting numerous clerical errors in the Marriage Act, 1908, provides for the *registration* instead of the *appointment* of ministers of religion as marriage officers, and imposes a penalty of £500 for solemnising a marriage contrary to the provisions of the principal Act.

Hurricane Relief (No. 28).—The Hurricanes Relief Continuance Act, 1909, continues in force the Hurricanes Relief Act, 1908, until December 31, 1909.

Sailing Vessels (No. 29).—The Sailing Vessels Passengers' Regulation Act, 1909, defines the word "passengers" as a person between the ages of two years and twelve to be treated as one passenger.

Hospital (No. 30).—The Hospital Act, 1909, enumerates the established officers of the Bahamas General Hospital, provides for an additional charge nurse, and makes the Hospital Act, 1906, permanent.

Larceny (No. 31).—The Larceny Act, 1909, reproduces the Imperial Larceny Act, 1901.

Sponge Exchange (No. 32).—The Sponge Exchange Amendment Act, 1909, reduces the rental of public property let to the Sponge Exchange Company from £30 to £20 per annum.

Magistrates (Nos. 12 & 33).—The Magistrates Act, 1909, consolidates six Acts which made provision for magisterial jurisdiction in connection with squatters, small tenements, and unlawful possession of goods.

The Magistrates Act Amendment Act, 1909, provides that where it is uncertain within which of adjoining districts an offence has been committed the magistrate of any such adjoining districts may try and punish the offender.

RETURN SHOWING ORIGIN AND FATE OF BILLS.

Place of Origin.	Number of Bills Introduced.	Number of Bills not passed.	Number of Bills that became Acts.
1. LEGISLATIVE COUNCIL:			
Government	1	1	—
2. HOUSE OF ASSEMBLY:			
Government	34	9	25
Select Committees	6	1	5
Private Members	4	1	3

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1908)—39.[1]

Savings Bank (No. 1).—The Savings Bank (Amendment) Act, 1908, increases the limit on the amount of deposits from £300 in the principal Act of 1890 to £1,000, and exempts from such limitation the treasurers of a friendly or other charitable society.

By another Act (No. 6, 1908) the remuneration of the ordinary managers is increased to twelve shillings and sixpence for each day's attendance; the number of *ex-officio* managers and ordinary managers is reduced to six and two respectively.

Police (No. 3).—The Police and Volunteer (Amendment) Act, 1908,

[1] Acts are passed by the Governor, the Council, and the Assembly of Barbados, and are numbered consecutively for the calendar year.

gives the Inspector-General of Police supervision of the Volunteer Force under the title of Commander of the Local Forces; he must be an officer in the Regular Army, or of the Royal Marines, or of the Militia of the United Kingdom.

Commissions of Inquiry (No. 4).—The Commissions of Inquiry Act, 1908, enables the Governor-in-Executive Committee to issue commissions of inquiry as to the conduct of public officials, the management of any public Department, or of any public or local institution receiving money from the Public Treasury. The Commissioners are to have power to summon and examine witnesses on oath, and the parties whose conduct is to be inquired into may appear by counsel.

Patents (No. 10).—The Patents (Amendment) Act, 1908, reduces the charge provided by the principal Act, 1903, for registration within the colony of patents granted by Great Britain or any other country from fifteen pounds to five guineas.

Quarantine (No. 11).—The Quarantine (Amendment) Act, 1908, is consolidated with the principal Act, 1905, and purports to amend certain Articles in the Quarantine Convention set out in the principal Act. The operation of this amending Act is suspended until His Majesty's pleasure not to disallow the same is notified by the Governor's proclamation.

(No. 19).—The Quarantine (Further Amendment) Act, 1908, amends certain sections of the principal Act, 1905, relating to administrative details. By an additional amendment Act (No. 25), 1908, the Governor is empowered to appoint an assistant health officer to assist in the duties imposed by the Quarantine Acts, and the Quarantine Board is empowered to make regulations with respect to ships, persons, and things arriving from countries, whether British or foreign, not parties to the Convention, 1904. The operation of the Act is suspended pending proclamation by the Governor.

Expiring Laws (No. 22).—The Expiring Laws Continuance Act, 1908, continues until March 31, 1909, the original and amending Acts enumerated in the schedule.

Natural Science (No. 23).—The Professorship of Chemistry and Government Laboratory (Amendment) Act, 1908, is consolidated with and amends the principal Act of 1891 by enabling the Education Board to appoint an Assistant Professor in Chemistry and Agricultural Science and a Lecturer in Natural and Agricultural Sciences.

Agricultural Bank (No. 24).—The Sugar Industry Agricultural Bank Amendment Act, 1908, amends sections 5, 9, 19, and 21 of the principal Act of 1907 (Review of Legislation, 1907—Barbados) as to auditors, extension of lien and charge to plantation utensils and implements and the live and dead stock, registration of repayments against certificates of loan, and registrars' entry fees.

Public Health (No. 27).—The Public Health (Amendment) Act, 1908, amends the principal Act of 1898 by making provisions for reports by

medical attendants of suspected cases of infection to the Sanitary Inspector and the General Board of Health.

Larceny (No. 30).—The Larceny Act, 1908, is consolidated with and amends the principal Act, 1868, and the amendment Act, 1905, in respect of the fraudulent misappropriation of property by persons to whom it is entrusted for safe custody, and on conviction such persons are made liable to penal servitude or imprisonment with or without hard labour. Receivers of property stolen to their knowledge outside the colony are liable, on conviction, to penal servitude or imprisonment with or without hard labour. Persons who obtain credit under false pretences or fraud, or defraud their creditors by parting with property with intent to defraud, or conceal or remove property since or within two months before the date of any unsatisfied judgment, are made guilty of a misdemeanour and liable to imprisonment.

Vehicles used for the purpose of removing stolen property at the time of the theft may be seized and sold, and the proceeds as to one moiety paid to the person from whom the goods were stolen, and as to the other moiety to the informer, or failing such into the Public Treasury.

Rats (No. 31).—The Rat (Destruction) Act, 1908, provides for the payment out of the Public Treasury of sums of money to the Parochial Treasurers of each parish to enable them to pay one penny for the head and tail of every rat produced to them and by them thereupon destroyed.

Light Railways (No. 32).—The Barbados Light Railway, Limited, (Amendment) Act, 1908, amends the principal Act of 1906.

Mineral Oil (No. 33).—The Oil Mines Order Confirmation Act, 1908, confirms the Order granted by the Governor-in-Executive Committee of Barbados under the Oil Mines Act, 1904, set forth in the Schedule.

Tobacco Sales (No. 34).—The Sale of Tobacco Act, 1908, which includes tobacco manufactured or unmanufactured, and cigars, but not cigarettes rolled in paper, makes it illegal to hawk any tobacco in the streets or highways of the island.

Trade (Local) (No. 37).—The Trade (Amendment) Act, 1908, is consolidated with and amends the Trade (Amendment) Act, 1902, by enabling the Comptroller of Customs to permit manufacturers of hard bread or crackers in bond to export the same before payment of duty, subject to certain conditions for the protection of the revenue.

Shops Closing (No. 38).—The Shops (Closing) Act, 1908, makes it obligatory to close shops from 9 p.m. until 6 a.m., except on Saturdays and days preceding Good Friday, Christmas Day, Bank or other public holidays, when closing hour is fixed at 10 p.m. No sales or purchases are to be made on Sundays, Christmas Day, Good Friday, or other day set apart by public proclamation for divine service. Certain exemptions are made by the Act in respect of the sale of medicine, bread, milk, food at hotels and boarding-houses, and in cases of sudden illness of man or animal.

3. BRITISH GUIANA.

[*Contributed by* Sir T. Crossley Rayner, K.C., *Attorney-General.*]

During the year sixteen Ordinances have been passed. Of these two, Nos. 5 and 6, are private Ordinances, and the remainder public general Ordinances. Few of these can be called important Ordinances, no less than six of them being (exclusive of the section enacting a short title) amending Ordinances of one section each.

The more important of the public general Ordinances are the following:

Customs Duties (No. 1) and **Tax** (No. 2) are the Ordinances passed annually by the Combined Court under which the revenue of the Colony for the financial year is collected and levied.

Wild Birds Protection (No. 4).—This Ordinance repeals in part an Ordinance passed in 1877, which among other birds protected carrion crows (a species of vulture) from being destroyed, under the idea that they were valuable as scavengers. A similar protection is accorded to them in several other colonies. Modern research, however, has thrown great doubt upon their usefulness, if, indeed, it has not shown them to be dangerous as disseminators of disease, and accordingly this Ordinance enables them to be destroyed in the two towns of the Colony, leaving them protected, however, in country districts, where, in the absence of such efficient sanitation as exists in the towns, they may possibly be of use.

Statute Laws (Evidence) (No. 8).—This Ordinance provides that the revised edition of the Laws of the Colony, printed in 1905, shall be deemed to have been printed by the Government Printers, so as to enable that edition to be received in evidence in proceedings in England under the Evidence (Colonial Statute) Act, 1907 (7 Ed. VII. c. 16).

Aboriginal Indians (Intoxicating Liquor) (No. 10).—This Ordinance prohibits the sale of intoxicating liquor to the aboriginal Indians of the Colony. A measure of this sort has been found necessary here, as it has been in many other places. The Ordinance makes it an offence to sell or give intoxicating liquor to any Indian, and enables any such liquor to be seized and forfeited. Any intoxicated Indian can be arrested and detained in any lock-up till he is sober, and is liable to a penalty if he refuses to give information as to the person who supplies him with liquor. This Ordinance follows the lines of similar legislation in Canada, Natal, and New Zealand.

Friendly Societies (No. 11).—In 1907 an Ordinance was passed to amend the law relating to Friendly Societies, making it compulsory for all Friendly Societies to be registered under the Friendly Societies Ordinance, 1893. Hitherto registration had been, as in England, optional, and only a comparatively small proportion of the Friendly Societies in the colony had been registered. By compelling all to be registered and

to submit to official inspection, it was hoped to secure increased efficiency and stability, and additional security to the members. But shortly after the Ordinance was passed, such strong opposition was made to it and to the principle of compulsory registration, especially by Friendly Societies connected with religious bodies, that it was decided to repeal it, and to re-enact the law as it formerly was. This is done by the Ordinance (No. 11) above mentioned.

Public Free Library (No. 12).—This Ordinance, based on the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), has been passed to provide for the management and control of a Free Library for Georgetown. The cost of the maintenance and upkeep of the library is borne equally by the Government and the Town Council of Georgetown, and the management is vested in a Committee, half nominated by the Governor and half by the Town Council.

Quarantine (No. 14).—This Ordinance repeals one passed in 1905 (No. 14 of 1905) for the purpose of giving effect to the recommendation of a Conference of representatives of various West Indian Colonies and British Guiana, by which uniform quarantine arrangements were to be made for all the Colonies represented. The repealed Ordinance established a quarantine system exactly similar to that adopted by the Conference, but did not follow the form adopted by the other Colonies in their Ordinances, and difficulties occurred when communicating with these Colonies on quarantine matters. This Ordinance makes no change in the law, but enacts it in similar terms to that adopted by the other Colonies which joined in the Conference.

Dentists (No. 15).—This Ordinance, which to some extent is based on the Dentists Act, 1878 (41 & 42 Vict. c. 33), provides for the registration of dentists in the same way as medical practitioners. No person may call himself by the title of Dentist, or any similar title, unless registered, under a penalty, and no person not registered can recover fees. The qualifications for registration are, being registered in England, the possession of a diploma granted by any body either in a British possession or a foreign country which the Medical Board of the Colony recognises as a guarantee of fitness, or being at the commencement of the Ordinance in actual practice as a dentist in the Colony.

Of the two private Ordinances, one (No. 5) incorporates the Mission Council in the Colony of the Presbyterian Church in Canada, and enables it to hold property for the purposes of the mission and vests in it all the property of the mission; the other (No. 6) enables the Demerara Railway Company to fund or capitalise arrears of dividend on certain of its preference stock into other stock, and to issue such new stock to the holders of the stock the dividends on which are in arrear in satisfaction of such arrears of dividends.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—20.[1]

Evidence: Colonial Statutes (No. 2).—The Evidence (Colonial Statutes) Ordinance, 1908, declares that the following compilations of Honduras Laws shall be deemed to have been and to be printed by the Government Printer of the Colony and be received in evidence under the Imperial Statute 7 Ed. VII. c. 16—the Evidence (Colonial Statutes) Act, 1907:

"The Consolidated Laws of the Colony of British Honduras."

"A Collection of the Ordinances in force July 3, 1897, passed by the Legislative Council of British Honduras, A.D. 1887-96 (inclusive), with an Index compiled by A. K. Young, B.A. Oxon., Barrister-at-Law."

Criminal Law (No. 3).—The Capital Offences (Assignment of Solicitor) Ordinance, 1908, slightly amends the Ordinance as to expenses of criminal prosecution in respect of the section enabling the Court to assign a solicitor to a prisoner who has not the means to pay for the services of one.

Postal (No. 4).—The Insurance of Post Letters Ordinance of 1908 amends a like Ordinance of 1907, by the adoption on the part of the Colony of the provisions of the Insurance Agreement of the Universal Postal Union dated and signed at Rome on May 26, 1906, so far as the same relates to the insurance of letters.

Marriage Law (No. 8).—The Deceased Wife's Sister's Marriage Ordinance, 1908, legalises all marriages with a deceased wife's sister theretofore or thereafter contracted, with provisoes securing marriages which had taken place upon an annulment of marriage under the pre-existing law, and saving all rights of property then existent from being prejudicially affected.

Chemists and Druggists (No. 16).—The Pharmacy and Poisons Ordinance, 1908, provides for the examination and registration of chemists and druggists and regulates the sale of drugs and poisons.

Tenants' Improvements (No. 17).—The Tenants' Improvements Ordinance, 1908, provides compensation to tenants of small holdings—not exceeding fifty acres and without a residence provided by the landlord—whose tenancies are determined by the landlord for all improvements (including trees planted) effected by the tenant at his own cost.

Immigration (Nos. 19 and 20).—The Labour (East Indian) Ordinances, 1908, enable the Governor to negotiate with the Government of Canada for the migration of East Indian resident labourers in Canada to British Honduras under agreement for hire in the form contained in the schedule, and to make advances for such transportation out of the funds of the Colony.

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council, and are numbered consecutively for the calendar year.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

(i) COLONY.

Laws passed—58.

The Legislation of 1907 was, as we pointed out in our last year's Review, entirely influenced by the terrible earthquake of that year. In consequence general legislation was shelved, and 1908 shows an unusually large crop of new laws. Some of these amend the relief measures of 1907 in small details, and some are of the nature of private Acts.

Traders' Licences.—The licensing of traders for revenue purposes seems to be of old standing in Jamaica, going back at least to 1867. The original law and three subsequent laws on the subject are consolidated in Law No. 7. Those trading under special excise laws, such as those relating to spirits, tobacco, etc., are outside the present law, as also are all persons dealing in foodstuffs.

The trades requiring licences under the law are those of merchant, general factor or wholesale dealer (£12 10*s.*), auctioneer or commission agent (£2 10*s.* to £7 10*s.*, according to locality), wharfinger (£2 10*s.*), supercargo (£5), proprietor of newspaper (£1 10*s.*), retailer (2*s.* 6*d.* for every £10 of gross value).

Where the licence is taken out for the whole year, the duty may be paid in moieties in April and October.

Roads.—A somewhat strong provision is made as to straying animals. The Superintendent of Parochial Roads and Works in any parish or any person acting under his authority may destroy any swine or goats at large on any parochial road (No. 11). The power is, however, not to be exercised with respect to swine or goats of an owner of unfenced land through which the road passes, with his boundaries.

Another law (No. 18) prohibits the use of a pneumatic horn on any "carriage" other than a motor-car.

Water Rates.—Elementary schools may be supplied by Parochial Boards with water free of charge (No. 13).

Endowed Schools.—Trustees of endowed schools desiring to change the site of a school, or to acquire or dispose of land, must obtain the sanction of the Governor in Council (No. 17).

Adulteration.—A new Law (No. 25) amends and supersedes the existing law of 1898. It consists of normal provisions, comprising provisions as to margarine.

Merchandise Marks.—The Law of 1888 is extended so as to include agricultural produce, the exportation of which is prohibited under other Laws.

Bird-catching.—The Trespass Law of 1850 is amended by adding a

penalty in case of any person placing, on the land of another without his consent, any trap or device for catching or killing birds (No. 29).

Entire Horses.—A duty of 40*s.* is placed upon every entire horse over the age of three years used upon any road or found roaming at large (No. 36).

Rifle Clubs.—Miniature rifles and ammunition may be imported free of duty for the use of rifle clubs approved by the Governor (No. 38).

Appeals from Turk's Islands.—Appeals are to lie from the Supreme Court of Turk's Islands to the Supreme Court of Jamaica in all civil cases. In criminal cases, cases may be stated (No. 46).

Medical Practitioners.—The Registrar of Births and Deaths is also Registrar of Medical Practitioners. No person unregistered is entitled to recover any fees, or is eligible to hold any medical office. A Medical Council is to be constituted of five practitioners, who may examine persons holding diplomas not entitling them to practise under the Medical Laws. Those holding diplomas of competency are entitled to be registered. There is an appeal from the Medical Council to the Governor in Council. The Law (No. 49) consolidates and amends six existing Laws.

Post Office.—The Post Office Laws of the Colony are consolidated and amended in a comprehensive Law of sixty sections (No. 51).

Registration of Voters.—Law No. 52 is a franchise Act which repeals many previous enactments.

In Jamaica, as Sir Charles Lucas says, "the parish is the unit, and each of the fourteen parishes, including Kingston, has a parochial board, elected on the same franchise as the Legislative Council." The two parishes of Kingston and Port Royal form one electoral division in elections to the Legislative Council. The qualifications, besides those of age and nationality, are: (1) possession as owner or tenant of a dwelling-house or property, upon which taxes of not less than 10*s.* have been paid; or (2) possession of personal property upon which taxes of not less than 30*s.* have been paid, combined with residence; or (3) receipt of an annual salary of £50 combined with residence. The period of qualification as respects (1) and (2) is nine months preceding January 31, to which date the register is made up. Receipt of relief from parochial funds during the nine months is a disqualification.

The lists are made up by the resident magistrates, and there is a Revision Court provided over by a revising judge, who has power to state a case for the opinion of the Supreme Court.

Corruption.—A Prevention of Corruption Law (No. 53) follows the lines of the English Act.

Poison.—Arsenic is not to be sold except combined with soot or indigo in the proportion of at least one ounce of soot or half an ounce of indigo to the pound; but this restriction does not apply if the arsenic is required for some purpose other than agriculture, and the mixture would render it unfit for the purpose in view.

(ii) TURK'S ISLANDS AND CAICOS.

Ordinances passed—3.

Sisal Plant.—Two of the Laws relate to appropriation and Statute Law revision. The third imposes a duty of 1½*d.* on every sisal plant exported from the Dependency.

6. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1908)—50.[1]

Interpretation (No. 1).—The Interpretation Ordinance, 1908, extends expressions referring to writing in Ordinances and legal documents to printing, lithography, typewriting, photography, and other modes of representing words in a visible form.

Explosives (No. 2).—The Explosives (Amendment) Ordinance amends and is consolidated with the principal Ordinance, 1907. It subjects all explosives on premises of wholesale or retail dealers licensed under the principal Ordinance to the inspection of the constabulary.

Criminal Procedure (No. 4).—The Criminal Procedure Ordinance, 1908, is consolidated with like Ordinances No. 13 and No. 25, 1907, and amends the former by giving the Court power, on application of a witness subpœnaed on behalf of an accused person, to order the payment of the reasonable expenses of the witness for attendance before the examining magistrate and the Court.

Prisons (No. 6).—The Prisons Ordinance, 1908, is consolidated with and amends the principal Ordinance (No. 27) by declaring that the term "prohibited article" shall mean any article prohibited by the Prison Rules for the time being in force. It authorises the Governor to sanction the employment of prisoners sentenced to hard labour on highways, roads, streets, or public place beyond the precincts of the prison.

Revised Edition of Laws (No. 9).—The Ordinance relating to certain enactments omitted from the Revised Edition, 1908, declares that the following Ordinances, notwithstanding their omission from the Revised Edition, shall be deemed to have the same force as if included in the Revised Edition—viz.:

Ordinance No. 10, 1863, to confirm certain marriages.

[1] Ordinances are made by the Governor, with the advice and consent of the Legislative Council, and Public and Private Ordinances are numbered consecutively for the calendar year.

Ordinance No. 13, 1873, for assimilating to the Law of England the practice with regard to addresses to the jury in civil actions.

Ordinance No. 7, 1876, to demonetise Spanish, Mexican, and Columbian silver coins called dollars.

Civil Procedure (No. 13).—This Ordinance, 1908, amends the Debtors (Amendment) Ordinance, No. 296, by declaring that judgment summonses shall not issue from the District Court of Tobago for service in Trinidad, nor from any District Court or Civil Court of inferior jurisdiction in Trinidad for service in Tobago.

Criminal Procedure (No. 14).—The Indictable Offences (Procedure) Ordinance, 1908, is consolidated with like Ordinances No. 2 and No. 53, and amends the former in respect of the terms "Stipendiary Justice of the Peace," "Stipendiary Justice," and "Justice" by substituting the term "Magistrate," which is to include any Justice or Stipendiary Justice of the Peace; and in respect of the power to issue search warrants in cases of indictable offences. In any case where on committal of a person for trial the amount of bail has been fixed by the committing Justice, then any other Justice may admit such person to bail in the amount so fixed, notwithstanding Ordinance No. 53, s. 3.

Immigration (No. 15).—The Immigration Ordinance, 1908, is consolidated with like Ordinances No. 161 and No. 22 (1905), and amends the former in respect of wages for task work by requiring that the value of free quarters and medical attendance shall be taken into account in computing the average rate of wages.

Governor's Salary (No. 17).—The Governors Ordinance, 1908, amends the like Ordinance No. 164 by subjecting the Governor's salary when on full-pay leave for periods not exceeding six weeks in the year, or whilst on a visit authorised by H.M. Secretary of State for the Colonies to other West Indian Colonies, to a deduction of one-fifth, the amount of which is to be paid to the officer administering the Government during the Governor's absence. In other cases of absence from the Colony, or in the event of incapacity to perform the duties of his office and an Administrator be appointed, the Governor shall receive half salary during the period of such administration.

Government Loans (No. 18).—The General Loan and Inscribed Stock Ordinance, 1908, declares the terms and conditions applicable to loans authorised to be raised by the Government of Trinidad and Tobago and provides for the creation of Trinidad Inscribed Stock, so as to enable the Colony to take advantage of the provisions of the Act of the Imperial Parliament entitled "The Colonial Stock Act, 1877," and subsequent Acts on same subject.

Quarantine (No. 21).—The Quarantine Ordinance, 1908, is consolidated with the Quarantine (Convention) Ordinance, 1905, and amends the same by substituting for the West Indian Inter-Colonial Sanitary Convention

of 1904, set forth in Schedule I. thereof, the terms of such Convention as amended in accordance with the recommendations contained in the Report (dated June 12, 1907) of the Central Quarantine Authority of the West Indies. The Quarantine Regulations of the principal Ordinance are also amended. The master, owner, or agent of any ship and any passenger who fails to comply with the regulations of the Quarantine Ordinances is made guilty of an offence under the Ordinance. The scheme for the establishment of a Central Quarantine Authority set forth in the Schedule and the provisions thereof are declared to have legislative effect and to be operative in the Colony.

Affidavits (No. 22).—The Commissioners of Affidavits Ordinance, 1908, makes all Stipendiary Justices of the Peace, Clerks of the Peace, assistant Clerks of the Peace, and Wardens in the Colony *ex-officio* Commissioners of Affidavits, enables the Governor to appoint Commissioners and assign them districts, declares all affidavits sworn before a Commissioner in the course of any action, suit, or other proceeding pending in the Supreme Court as effectual as if sworn before a Judge of such Court, and makes guilty of perjury persons knowingly swearing a false affidavit.

Statutory Declarations (No. 23).—The Statutory Declarations Ordinance, 1908, enables the Chief Justice and others to take the declaration of any person voluntarily making the same before him in the form given in the Schedule, and makes persons declaring statements false in fact to knowledge of declarant liable to punishment by fine or imprisonment.

Injuries to Property (No. 24).—The Malicious Injury to Property Ordinance, 1908, is consolidated with a like Ordinance, No. 16, and makes malicious injury by any person to property, either public or private, to an amount exceeding five pounds a misdemeanour with the punishment of imprisonment on conviction.

Death Duties (No. 25).—The Estate Duty Ordinance, 1908, imposes estate duty on—

(*a*) Property at disposition of the deceased at death.

(*b*) Property disposed of by the deceased as a *donatio mortis causâ* or as an immediate gift *inter vivos* within the twelve months before death, or by gift at any time unless the donee had absolute and immediate beneficial possession exclusive of donor.

(*c*) Property of the deceased passing on death to the survivor of a joint tenancy created by the deceased.

(*d*) Property disposed of by the deceased with reservation to himself of an interest therein determinable on his death or of a power of revocation in his favour of such disposition and whether the same were with or without valuable consideration.

(*e*) Money received on policy of assurance on life of the deceased effected by him for the benefit of a donee either wholly or, if partially, then proportionately to the premiums paid by deceased.

The duty on property passing under (*c*) and (*d*) shall on disposition for full valuable consideration be incident on the amount of such consideration.

The property subject to the estate duty includes real and personal property situate in the Colony, and, if deceased died domiciled in the Colony, personal property wherever situate, except property upon which duty is payable in the United Kingdom or any British possession.

The Ordinance contains provisions as to incorporated companies registered either within or without the Colony and carrying on business within the Colony, and makes any shares held by deceased at death liable to duty. After making provisions for the administration and collection of the duties, the rates of duty are declared by the Schedule on a graduated scale from one to twelve per cent. on the principal value of the aggregate estate of the deceased.

Mongoose (No. 25).—The Mongoose Ordinance, 1908, makes it illegal for any person to keep any live mongoose.

Stamp Duties (No. 28).—The Stamp Duty Ordinance, 1908, repeals like Ordinances No. 209 and No. 1, 1905, and all regulations thereunder; and in ninety-four sections with a detailed schedule of rates of duty re-enacts the Stamp Duties for Trinidad and Tobago. This Ordinance is amended by Ordinance No. 47, 1908.

Creditors' Remedies (No. 29).—The Remedies of Creditors Ordinance, 1908, deals with fees and registration of judgments, summonses for sale without execution by judgment creditors, vesting legal estate by order of Court, sale of lands of debtor, and entry of satisfaction on registered judgments.

Petroleum (Nos. 30 and 31).—The Customs Duty Ordinance, 1908, imposes an import duty of twopence per gallon on dangerous petroleum.

The Petroleum Ordinance, 1908, in respect of all products of petroleum, and rock oil, Rangoon oil, Burmah oil, and their products, and oil made from petroleum, coal, schist, shale, peat or other bitumenous substance, regulates the licences, storage, sale, shipping, and warehousing in the ports, and gives powers to the constabulary to secure the observance of the regulations.

Sign Boards (No. 32).—The Port-of-Spain Signs Regulation Ordinance, 1908, gives powers to the Town Board to regulate all sign-boards, flag-staffs, awnings, and advertising devices in or over the public streets and footways.

Agriculture (No. 34).—The Ordinance for raising funds in aid of agriculture for the period from July 1, 1908, to December 31, 1908, imposed certain rates of duty on exports of cocoa, sugar, and coconuts, and appropriated the amounted collected to the funds in the Treasury applicable in aid of agriculture.

By similar Ordinance (No. 48, 1908) a further period from January 1, 1909, to December 31, 1909, is provided for.

(No. 35).—The Board of Agriculture Ordinance, 1908, established a Board of Agriculture for Trinidad and Tobago.

Registration of Deeds (No. 36).—The Registration of Deeds Ordinance, 1908, is consolidated with a like Ordinance, No. 57, and authorises deeds executed out of the Colony to be registered or admitted in evidence when the witness proving the execution of the deed makes an oath or solemn declaration before a Notary Public, who certifies the same under his hand and seal.

Industrial Schools (No. 46).—The Ordinance to amend a like Ordinance, No. 30, is consolidated with the amended Ordinance and Ordinance No. 23, 1906. By this amending Ordinance any child apprenticed pursuant to the Ordinance who wilfully refuses to conform to the terms of apprenticeship or quits his master's service without leave, is guilty of an offence, and on conviction is liable to detention in the Industrial School from whence he came for the unexpired term of his apprenticeship; and masters failing to perform their duties to their apprentices are made guilty of an offence, and on conviction are liable to a fine or imprisonment.

Real Property (No. 49).—The Real Property Ordinance, 1908, is consolidated with like Ordinances, No. 60 and No. 21, 1905, and provides that every instrument executed by the registered proprietor, mortgagee, encumbrancer, or other person having any estate or interest in any land under this Ordinance and attested by one witness shall be deemed duly executed, and such instrument when registered shall have the force and effect of a deed made by the parties executing the same, and other sections amend, vary, and extend sections in Ordinance No. 60 with respect to proof of execution.

Married Women (No. 50).—The Married Women's Property Ordinance, 1908, is consolidated with like Ordinances, No. 65 and No. 1, 1907, and provides for disposition by married women of property held as trustees of trust estates, and confirms all such dispositions since December 31, 1884, with a saving of any rights acquired before commencement of this Ordinance.

Settlements by the husband or intended husband made after commencement of this Ordinance, whether before or after marriage, of the property of any woman he may marry or have married, shall not be valid unless executed by her if of full age or confirmed by her after full age. If the woman dies an infant, the settlement by the husband shall bind property of hers to which he becomes entitled on her death and which, if this Ordinance had not been passed, he could have disposed of. The provisions of the Infants' Settlement Ordinance, No 70, are saved from repeal by this Ordinance. A married woman, who if single would be entitled to be a protector of a settlement, shall in respect of a prior estate made her separate property alone be the protector of the settlement.

7. WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* Sir Charles J. Tarring, *late Chief Justice of Grenada.*]

Ordinances passed—28, including two not assented to during the year, and therefore not included in this year's volume.

Of the twenty-six printed, two were passed to validate proceedings of Legislative Councils at which members were present as to whose right to sit doubts had arisen; two were Appropriation Ordinances; and twelve were amending Ordinances, of which eight were of no general interest.

The Code of Criminal Procedure, 1897, is amended by two Ordinances (Nos. 23 of 1908, and 9 of 1909), the first of which relates to the mode of carrying out sentences, of death and punishments substituted in cases of reprieve; the other, among other things, applies exemptions in certain cases to members of unauthorised rifle clubs, and penalises the importation, production, or sale of any books, etc., tending to propagate or encourage a belief in Obeah.

The Sale of Poisons Ordinance (No. 24) and its amending Ordinance (No. 6, 1909) enact a schedule of poisons (which the Governor is empowered to add to, to exclude from, to alter, or to modify), regulates their sale under penalties, and provides for inspection of sale books.

The Quarantine (Amendment) Ordinance (No. 2 of 1909) agrees to and adopts certain modifications and alterations (set out in the preamble) of the West Indian Intercolonial Sanitary Convention, 1904, as well as certain modifications and alterations of the Quarantine Regulations contained in the first Schedule to the Quarantine Ordinance, 1905; as also the provisions of the scheme for a Central Quarantine Authority for the West Indies set out in the second Schedule to the Ordinance; and gives the force of law to decisions of the authorities as to the meaning of any phrase in the Convention or the Regulations or as to the nature of any disease. Penalties are imposed for evasion of the Regulations.

The Excise Ordinance (No. 2) repeals and replaces the Excise Ordinances of 1890 and 1896. It provides for the payment of duty, registration and transfer of stills, prohibition of distilling, etc., without licence, the grant and transfer of licences, construction and alteration and user of stills, inspection, removal, storage, transfer, and delivery of spirits, and creates offences and prescribes penalties.

The titles of **the Police Pensions** Ordinance (No. 25), **the Carriacou Jetty Rates** Ordinance, and **the Parish Boundaries** Ordinance (No. s. 14, 15) explain their respective objects.

The Revised Edition of the Laws Authorisation Ordinance (No. 8) brings that edition within the scope of the Imperial Evidence (Colonial Statutes)

Act, 1907, by enacting that Messrs. Waterlow & Sons, Limited, of Great Winchester Street, shall be deemed to have been appointed Government Printers of the edition by the Colony of Grenada.

The Shipping Ordinance (No. 10) is divided into four divisions, referring to British ships, foreign ships, intercolonial ships (defined as ships employed in the coasting trade of the Colony, and ships (except steamships) making voyages between the Colony and any place at a distance not exceeding six hundred miles, or as declared by the Governor), and making miscellaneous provisions respectively. In Division I. sending unseaworthy ships to sea is made a misdemeanour; power is given to detain unsafe ships, and a court of survey provided. In Division II. the provisions as to detention are applied to foreign ships. In Division III. the provisions for detaining British ships are applied to intercolonial ships; declarations from masters as to tonnage and persons on board, certificates for passenger ships, proper and sufficient life-saving appliances, inspection, etc., are required. In Division IV. recovery of penalties and their application are dealt with.

The Real Estate Devolution Ordinance (No. 12) assimilates the devolution of real estate to that of personal estate on the death of the person in whom it is vested without right of survivorship, and provides for the grant of probate and administration of real estate though there is no personal estate, for the duties of personal representatives in that respect, for the transfer to heirs or devisees, and for the appropriation of land in satisfaction of legacies or shares in estates.

The Peasant Proprietors' Relief Ordinance (No. 21) is an attempt to protect owners or occupiers of not more than ten acres of land who are agriculturists, labourers, domestic or menial servants, artificers, handicraftsmen or otherwise engaged in manual labour, from the consequences of improvident or harsh and unconscionable or inequitable contracts with respect to the sale of cocoa, nutmegs, or cotton to or by dealers.

(ii) ST. LUCIA.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

1907.

Ordinances passed—12.[1]

Old Metal (No. 1).—The Old Metal Ordinance, 1907, requires all dealers in old metal to be licensed under the Ordinance by the Treasurer upon a report in writing by the Chief of Police, and entries of all purchases to be made in a book by the licensee in the form prescribed in the schedule to the Ordinance.

Insanity (No. 2).—The Civil Code Amendment Ordinance, 1907, amends

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council of St. Lucia and are numbered consecutively for the calendar year.

Art. 290 of the Civil Code, and provides that when a demand for interdiction is made on account of imbecility, insanity, or madness, and the defendant is in confinement in an asylum, he is not interrogated, but a certificate by the medical superintendent of the asylum is produced to establish the mental condition of the defendant.

Volunteers (No. 5).—The Volunteer Ordinance, 1907, enables the Governor of the Colony on behalf of the King to enrol volunteers for a term of three years under the constitution and regulations created and provided by the Ordinance, and to disband the force so raised if and when it seems to him expedient.

Volunteer Reserves (No. 6).—The Volunteer Reserve Ordinance, 1907, constitutes the St. Lucia Volunteer Reserve Force, and empowers the Governor to make all necessary regulations for the management and discipline of the force, and to disband the force if and when he deems it expedient.

Bills of Exchange (No. 8).—The Bills of Exchange (Crossed Cheques) Ordinance, 1907, amends the principal Ordinance of 1893, which extends the Bills of Exchange (Imperial) Act to the Colony, by extending to the Colonial Act the Imperial Bills of Exchange (Crossed Cheques) Act, 1906.

1908.

Ordinances passed—11.

Colonial Statutes, Evidence of (No. 3).—The Civil Code, etc., Authentication Ordinance, 1908, extends the Evidence (Colonial Statutes) Act, 1907 (Imperial Act, 7 Edw. VII. c. 16), to the Civil Code, the Code of Civil Procedure, and the revised edition of the Laws of St. Lucia, 1889.

Advances on Crops (No. 4).—The Civil Code (Privilege on Crops) Amendment Ordinance, 1908, makes fourth in order of priority, when ranking liens on land, the amount of advances made or value of supplies furnished for tilling, sowing, planting, cultivating, reaping, curing, milling, ginning and manufacturing, or claim of metayers for tilling, sowing, planting, and cultivating, and the Civil Code is varied accordingly with respect to the section on privileges for cultivation advances or supplies.

Dentistry (No. 5).—The Medical Registration Ordinance, 1904, Amendment Ordinance, 1908, empowers the Governor at his discretion to grant permission to practise dentistry to any person who had been in actual practice as a dentist in the Colony for five years preceding January 1, 1905, and the Medical Board shall thereupon grant a certificate for registration to enable the dentist to practise for fee or reward.

Property: Land Valuation (No. 6).—The Valuation of Property Ordinance, 1908, provides for the making of a valuation roll for the whole Colony in or before the month of December, 1908, showing the value of all immovable

property in each district and the names of the persons in possession of the same. The Ordinance vests in the Governor the appointment of valuation commissioners and regulates the assessment and other necessary procedure for giving effect to the Ordinance.

Contagious Disease (Animals) (No. 8).—The Contagious Diseases, etc., Ordinance, 1908, amends the like Ordinance of 1906 by defining "disease" as meaning cattle plagues, or rinder-pest, contagious pleuro-pneumonia, anthrax (splenic fever), glanders, foot-and-mouth disease, variola ovina (sheep pox), sheep scab, foot rot, tuberculosis, swine fever, variola vaccina (cow pox), rabies, surra, swine-erysipelas, and other diseases brought within the Ordinance by order of the Governor in Council, and the principal Ordinance is further amended by giving power to the Governor in Council to prohibit the importation of any animal carcases, fodder, or litter suspected to be diseased.

Prisons (No. 10).—The Prison Ordinance, 1908, enables the Governor in Council to appoint any place as a prison, and gives to all prison officers the power, protection, and privileges of police constables, and makes it lawful for the Governor to order the prison officers to be armed so as to prevent attempts on the part of prisoners to escape.

Public Companies (No. 11).—The Companies, etc., Ordinance, 1908, amends the like Ordinance, 1869, by declaring that no company shall be registered under a name containing the word "Empire" or the word "Imperial" without the written permission of the Governor.

(iii) ST. VINCENT.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

1907.

Ordinances passed—8.[1]

Bills of Exchange (No. 1).—The Bills of Exchange (Crossed Cheques) Ordinance, 1907, amends the Bills of Exchange Ordinance, 1895, by extending to the Colony the Bills of Exchange (Crossed Cheques) Act (Imperial), 1906.

Volunteer Forces (No. 5).—The Volunteer Reserve (Amending) Ordinance, 1907, empowers the Governor to call out the members of the Volunteer Reserve with their arms and ammunition in aid of the civil power on the occasion of invasion, insurrection, riot, tumult, disturbance of the peace or other emergency which in the opinion of the Governor is likely to be beyond the power of the civil authority to effectively deal with.

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council and are numbered consecutively for the current year.

1908.

Ordinances passed—12.

Poisons (No. 3).—The Sale of Poisons Ordinance, 1908, makes regulations for and imposes restrictions on the sale of poisons. The schedule sets forth the poisons to which the Ordinance applies. Penalties are imposed for selling poisons otherwise than in the manner provided by the Ordinance.

Colonial Evidence (No. 5).—The Laws of St. Vincent, 1784 to 1884, Authorisation Ordinance, 1908, extends the Evidence (Colonial Statutes) Act, 1907 (Imperial), to the Edition of the Laws of St. Vincent for the years 1784 to 1884 contained in two volumes printed in London in 1884.

Companies (No. 9).—The Companies Act, 1874, Amending Ordinance, 1908, amends the principal Act by excluding companies from registration under a title including the words "Empire" or "Imperial" without the previous consent of the Governor, and under a name identical with that of another registered and subsisting company.

Public Library (No. 12).—The Library Ordinance, 1908, establishes a Free Public Library under the care and control of the committee of management constituted by the Ordinance.

8. LEEWARD ISLANDS.

[*Contributed by* Edward Manson, Esq.]

FEDERAL COLONY.

Ordinances passed—11.

Remission of Sentence (No. 4).—The Governor in Council is empowered to make rules enabling a prisoner sentenced to imprisonment to earn by special industry and good conduct a remission of a portion of his imprisonment.

Cotton Industry (No. 5).—The Governor may under this Ordinance make advances at 5 per cent. towards the planting, production, and reaping of cotton crops; the crop when fit to be conveyed to a place approved by Government, and exported to the British Cotton-growing Association, and the balance paid over to the borrower.

Quarantine (No. 7).—This is an important Ordinance adoping the West Indian Intercolonial Sanitary Convention with the Quarantine Regulations annexed. Each Colony is as soon as possible to notify by telegram to the other colonies the first appearance within such Colony of recognised cases of infectious or contagious disease, accompanied by detailed information as to locality, date of appearance, number of cases, measures adopted, etc., and this is to be followed up by a weekly telegram notifying new cases and any

progress in the disease. Every Colony is to be provided with a proper station and buildings for isolation of persons arriving who may have developed or may develop disease. There is also to be an effective disinfecting apparatus. Under the Quarantine Regulations annexed to the Convention merchandise need only be disinfected when, in the opinion of the Health Officer, it is infected.

MISCELLANEOUS.

Police.—No. 1 amends the Police Act as to appointment of a Chief Inspector; and rewards for good service.

Supply.—No. 2.

Post Office.—No. 3 vests rule-making power in Governor in Council.

Stamps.—No. 6 provides for more efficient collection.

Evidence.—No. 8 makes the Government Chemist's certificate *primâ facie* evidence at preliminary investigations of the matters contained therein.

Records.—No. 9 amends the Registration Act, 1881.

Pensions.—No. 10 fixes date for.

Jury Laws.—No. 12 amends the law as to selection of jurors to form panel, and declares who are exempt from serving.

(i) ANTIGUA.

Ordinances passed—14.

Locomotives on Highways (No. 1).—Locomotive here means any vehicle propelled by mechanical power. The use of such vehicles on highways may be sanctioned subject to rules by the Governor in Council. Driving a light locomotive on a public highway recklessly or negligently or at a speed dangerous to the public is made an offence punishable with a fine of £20. Light locomotives must carry bells and lights after sunset.

Labourers' Wages (No. 8).—Labourer here means any servant in husbandry, journeyman, artificer, handicraftsman, or person otherwise engaged in manual labour upon any plantation or estate in Antigua whether under twenty-one or over. Such labourers are to be paid their wages in current coin of the realm and not otherwise, and at intervals of seven days and such other extended interval not exceeding one month as may be agreed on. Bank notes or money orders may be used in payment with the consent of the labourer.

Carriage of Passengers by Sea (No. 11).—This Ordinance limits the number of passengers that any ship may carry to one for every ton of registered tonnage. Lists of passengers must be lodged with the Treasurer before a ship sails.

Shipping (No. 14).—The Harbour Master, if he has reason to believe a British ship registered in a port in the Colony to be unsafe, is to report to the

Shipping Master, who may detain the ship unless the owner or master satisfies him within forty-eight hours of the ship's safety.

AMENDING AND OTHER ACTS.

Barbuda Management Ordinance amended (No. 4).

Contagious diseases among animals: "animal" redefined (No. 3).

Defence Force and Defence Reserve Ordinances amended (Nos. 6, 7, and 10).

Land Tax Ordinance amended (No. 5).

Supply (Nos. 2, 9, 12, 13).

(ii) DOMINICA.

The legislation for 1908 has not yet come to hand.

(iii) MONTSERRAT.

Ordinances passed—2.

The legislation this year deals only with supply.

(iv) ST. CHRISTOPHER AND NEVIS.

Carriage of Passengers by Sea (No. 6).—This is an Ordinance to prevent the overcrowding of vessels. No ship is to carry more than three passengers to every ton of registered tonnage. The master is before clearance to lodge with the Treasurer a list of passengers and a declaration, and the Treasurer may at any time order inspection.

Mosquitoes (No. 8).—The mosquito a quarter of a century ago was regarded simply as a nuisance. It is now recognised as the most formidable foe of civilisation in the tropics. This Ordinance declares a war of extermination against mosquitoes. Owners of any cistern, vat, tank, barrel, or bucket used for the storage of water are to provide covers for them, and screen all openings with mosquito-proof netting. Owners of wells, ponds, pools, or basins in which mosquitoes can breed are to stock them with mosquito-destroying fish or cover them with protecting netting, or draw them off once a week or cover them with petroleum oil at least once a week or fill them up. Broken glass on walls, jars, tins, broken crockery, and other such receptacles where mosquitoes might breed are to be buried. Punts and boats must be kept free of fresh water. Any servant of a District Board of Health may at any time treat stagnant water by applying petroleum oil to its surface. If the owner fails to do the work when notified by a Central Board of Health, the Board may do it and recover the cost as a civil debt.

Licences to Porters and Boatmen (No. 9).—This is an illustration of the marked tendency in modern legislation to bring under legal control all occupa-

tions and professions which touch the public. No person is to ply for hire or act as a porter or boatman on shore or in boats or vessels without obtaining a licence from the Inspector of Police, signed by the magistrate of the district, as a guarantee of respectability and fitness. With the licence a numbered metal badge is to be issued. The fee for a licence is 4*s*.

A licensed porter or boatman is to be liable for damage done by his negligence to property entrusted to him, besides a penalty, and must make no attempt to extort more than his legal due, on peril of forfeiting his licence.

Miscellaneous Ordinances.

Cotton Traffic.—No. 10.

Customs Amendment.—No. 2.

Liquor Traffic.—No. 5 authorises the Governor in Council to grant licences for entertainments, shows, sports, race-meetings, and other social gatherings.

Medical Districts, Defines.—No. 3.

Redemption Loan.—No. 4.

Supply.—Nos. 1 and 7.

(v) THE VIRGIN ISLANDS.

Liquor Licences (No. 2).—This is another instance of the growing State regulation of the liquor traffic. Every person may obtain a licence to sell liquors by retail in the house named in the licence at a prescribed fee. The word "may" here practically means must, for any one selling without a licence is liable to a penalty of £100. Magistrates may grant a search warrant to enter and examine premises where liquor is sold.

Supply.—Nos. 1, 3, 4, 5.

XI. MEDITERRANEAN COLONIES.

[*Contributed by* Albert Gray, Esq., K.C.]

1. GIBRALTAR.

Ordinances passed—5.

Jury.—A jury is now to consist of seven persons, of whom five may return a verdict after a deliberation of not less than two hours. In capital cases, however, the jury is still twelve, and must be unanimous (No. 1).

Matrimonial Causes.—Power is given to the Supreme Court to grant maintenance and alimony, in decreeing dissolution or nullity.

Married Women's Property.—A married woman is declared to be able, without her husband, to dispose of any real or personal property held by her solely, as if she were a femme sole (No. 4). And notwithstanding s. 19 of the Imperial Act of 1882, a settlement made by a husband respecting the property of the wife shall not be valid until executed by her, if she is of age, or confirmed by her after she comes of age. This applies whether the settlement is made after marriage or in contemplation of it.

Deceased Wife's Sister.—The English Act is enacted for Gibraltar (No. 5) with all its inconsistencies and dubieties.

2. MALTA.

Ordinances passed—9.

Naturalisation.—The period of residence required is fifteen years "or any shorter period as may be allowed by the Governor in Council on any special occasion."

Royal Arms.—The Ordinance of 1903 relating to the use of the Royal Arms is amended by a provision directed against the use, without authority of any arms resembling the Royal Arms, or any emblem or device intended to lead to the belief that the tradesman supplies the Royal Family.

Disease Prevention.—No. 8 is a comprehensive Law dealing with infectious and contagious disease both of men and animals. First, as regards human disease, there are the usual provisions for notification, for prevention of epidemic disease, vaccination, and disinfection. Next, as to animals, we find the usual provisions for isolation, slaughter of infected animals, landing of foreign animals.

Pensions.—The pension Law of 1905 is amended by a provision that, in case of a pensioner being sentenced to death or imprisonment exceeding twelve months, the pension is to cease, but a merciful proviso follows to the effect that in such case the Governor may apply not exceeding two-thirds of the pension for the benefit of wife, children, or relatives dependent upon the prisoner.

3. CYPRUS.

The review of the legislation will appear next year.

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NOTES.

The late Dr. Ernst Friedrich Sieveking.—The Editors are indebted to Lord Justice Kennedy for the following notice:

"It is, I think, fitting that some notice should appear in this Journal of the very remarkable man whose death in the early part of this winter has deprived Europe of one of her most distinguished jurists.

"Ernst Friedrich Sieveking was born in Hamburg on June 24, 1836. He was the third son of Friedrich Sieveking, Burgomeister of Hamburg. After pursuing his law studies in Gottingen, and passing some time in England, with which he had a family connection, he was admitted to the Bar at Hamburg in 1857. In 1874 he was elected a member of the Burgerschaft of Hamburg, and in 1877 he became a Senator of Hamburg. In 1879 he was chosen to be the first President of the Hanseatic High Court of Appeal. In 1889–90 he was entrusted by the German Government with the important duty of representing his country as first delegate at the Maritime Conference in Washington. He took a prominent part in the framing of the German Civil Code, especially in regard to the sections of that Code which relate to private international law, and he served as the Hamburg delegate to the Federal Council in Berlin in 1896. Five years ago he was elected a member of The Hague Tribunal. For many years past he took a leading part in the Conferences of the International Law Association and the Comité Maritime International. In 1890 he was elected a member of the Institut de Droit International.

"Dr. Sieveking was not only a great lawyer and a great judge, but a man of wide intellectual sympathies and varied learning, versed alike in the ancient classics and in the literature of modern Europe. He was master of the languages of England, France, and Italy. Fond of travel everywhere, he especially delighted in the scenery of Switzerland and Scotland.

"In England he had many friends; and at the time of his death in November last he was, I believe, meditating a Christmas visit to London. Charming and admirable alike in the nobility of his character, and in his genial and dignified courtesy, he will long be remembered with affection and respect far beyond the limits of his city and his country."

Native Customs in East Africa.—Just as native usages are dying out in many parts of the world, we are beginning to awake to their value—the light which they shed on primitive ideas of justice and those early

stages of civilisation through which our own race has painfully climbed to a higher plane. Very welcome, therefore, is the record of Native Laws and Customs from East Africa which Mr. Justice Hamilton has appended to his latest volume of Law Reports for that part of the Empire. We give them *in extenso*:

KAVIRONDO.

The payment of blood-money is usually arranged among all Kavirondo tribes by consultation among the elders. Should they decide that a man is guilty of causing the death of one of their people, he is required to pay anything up to twenty cows, according to his wealth. A man owning one or two cows would probably be required to pay all, if five to pay four, if ten to pay seven, and so on. (J. Ainsworth.) The most usual number appears to be ten head of cattle and five goats. If the murderer can only pay half, the friends of the deceased can kill him or a relative, but the debt may be fully discharged by dividing the payment of the whole or the balance among the murderer's relatives. (Cr. C. 185/07, T. M. Kisumu.)

Damages are claimable by the relatives of an unmarried woman from a man who has had sexual intercourse with her, the ordinary damages being one cow and one goat.

In a case of adultery with a married woman the damages payable by the adulterer are fixed at one bull. (R. W. Hemsted.)

In order to qualify to wear the tooth of a wart-hog as a personal adornment it is necessary that the wearer should have killed a man. Murders have been committed with this object. (Cr. C. 3/1906.)

NANDI.

On a man's death his son inherits his herds and flocks, and it is customary to distribute his stock amongst his wives during his lifetime, each one being given a certain number to look after. The sons of each wife inherit the property thus placed in their mother's charge.

The eldest son of the principal wife inherits the lion's share of his father's property, he also receives all the cattle which his father lent to his childless wives, unless those wives have taken charge of any of their stepchildren, when they are inherited by them.

Widows nominally become the property of their husband's next elder or next younger brother, but they frequently live with one of their sons, or they go and live with their father or one of their brothers.

The eldest son is expected to give a cow to each of his father's widows for their own use; the eldest son of each wife looks after his sisters and receives the stock which his father would otherwise have received on their marriage. Cattle paid to a man when his daughters are married are inherited by the girl's young brothers.

If a man dies unmarried or without sons, his brothers inherit his property and make a home for his daughters, if he has any; if he has no brother, his step-brothers are his heirs, and, failing them, his paternal cousins.

A father can only inherit from his sons when they have not reached man's estate.

Daughters inherit their mother's ornaments and household utensils. Sons and daughters inherit her plantations and retain an interest in them until they

become warriors or are married, when the land is taken by one of the sons' wives or is handed over by the father to one of his other wives.

On a woman's death her plantations are frequently allowed to go out of cultivation.

Punishments.

Blood money for a man five cows, five bulls and thirty goats, woman or child five cows, four bulls and fifteen goats, one cow at least to be paid by the murderer himself.

A Nandi who kills a member of his own clan is regarded as unclean for the rest of his life unless he can succeed in killing two other Nandi of a different clan.

A Nandi who murders a Nandi of another clan is unclean for four days.

There is no penalty for assault even if the injured person loses an eye or a limb, but while he is suffering from the effects of the injury the man who assaulted has to slaughter oxen and goats fairly frequently to provide him with food. Should the person assaulted eventually die from the effects of the wound, blood money is payable over and above any cattle that may have been slaughtered for him during his mortal sickness.

A thief is beaten and fined four times the value of the property; if the thief is too poor the fine must be paid by his relations.

A second theft is punished by confiscation of half the thief's property and the destruction of his granaries and crops in addition to torture by a thong, which leaves a mark upon his forehead.

For a third theft the thief is strangled and his cattle and goats slaughtered.

Theft by a woman or child is punished by beating on the first occasion, and on the second occasion by tying up and beating with stinging nettles.

When grain or stock is stolen the fine is in kind.

There is no recognised punishment for adultery, but if a man were to find a member of his own "mat" having intercourse with one of his wives he might beat him severely.

Incest, intercourse with step-mother, step-daughter, and every near relation is punished by the adulterer being flogged by the women of the village, and the destruction of his house and crops.

If an unmarried warrior has a child by a girl, he has to slaughter an ox when the child is born; the mother is regarded with contempt for the rest of her life. In the event of a girl dying in childbirth no compensation is payable by the adulterer.

A husband may divorce a barren wife of bad temper, but can only claim back the marriage price paid for her if he obtains her another husband. A wife who has borne children cannot be divorced.

If a wife dies barren, her marriage price is repayable to her husband or his heirs.

(A. C. Hollis.)

WATEITA.

A distinction is to be drawn between the Wateita of Dabida, the main body descended from the Wa Pare, Wakamba and Masai, and the Wateita of Ndara and Kisigao, who derive from the Wagiriama, and whose customs and language consequently vary somewhat from those of the main body.

The following notes refer to the Wateita of Dabida:

When a man dies his wives go to his son or nearest male relative, who may live with any or all of them as his wives (mothers always excepted), or he may marry them to any other man, receiving the marriage price.

On a man's death his property is divided as follows:

The son of the senior wife (although he may be the youngest of several sons) gets the largest share, even up to one-half of the property, the other half is divided equally among the other sons.

Females can inherit nothing, but it is customary to kill a goat or two and divide amongst them.

If a man has had connection with an unmarried woman, whether as a case of rape or with her consent, and she becomes pregnant, he must pay a cow to her owner. If she does not become pregnant he pays nothing.

If a man commits adultery with another man's wife he has to pay a cow. The child, if any, becomes the property of the husband.

If a person cultivates a piece of land, though for one season only, this gives him a perpetual right to it, he may get a rent for it or sell it.

The Wateita are one of the few tribes in the East Africa Protectorate who recognise title to land. In a recent case a certain party claimed a patch of land on the ground that it had been cultivated by his grandfather, but not since his grandfather's death. Had he been able to prove that his grandfather was the last to cultivate it he would have had, as admitted by the parties, an inalienable right to it. He failed to prove his case, but the principle was not contested.

Payment for a murder is valued at fifteen cows or more.

(C. S. Reddie.)

Somalis of Jubaland.

The Somalis, though nominally Shaffei Mahomedans, have supplemented the Sheriah with customs of their own.

Women usually marry between the ages of thirteen and fifteen years.

After marriage, disputes between husband and wife go before the husband's chiefs. If the father complains of the husband he does so to the husband's chiefs. If the quarrels are serious and a divorce is demanded, and the woman remains in her husband's keria until the matter is settled, she, if she gets a divorce, has to pay what she received from her father. If she runs away her father has to repay the "Karama"[1] in addition. If a married woman runs away by herself from ill-treatment, the matter is usually arranged without quarrelling, if with a man a serious point is raised, and both are heavily fined, the man paying the woman's fine if she has nothing.

If a woman has run away with a man and married him and afterwards runs off by herself no one has to pay, if with another man the chiefs are called in, and she is returned, but no fine is exacted.

A man has to give food and water to his wife's relatives, if he does not they can carry off the woman until the affair is peacefully arranged. The wife's tribe must do the same for the husband.

If no father or grandfather is living a girl may not marry before fifteen, but can marry who she likes. The "Karama" usually goes to her brother or her father's brother.

If a man marries and has no issue, and dies, his widow can marry again.

[1] "Karama," money paid by the husband in presents to wife's relatives, and feasts.

If the father or brother of a widow who has remarried gets a divorce he has to pay two "Karamas" to the deceased husband's brother.

Property is divided as follows:

(1) All debts are paid.

(2) If there is only one son he takes all the property except one-eighth which is divided amongst the deceased's wives.

If there is one son and one daughter, the son takes half, the daughter a quarter. Wives of deceased one-eighth, and the remaining one-eighth between the son and daughter. If there are more children, sons take two shares to a daughter's one.

If the children are minors, the deceased's eldest brother takes wives, children and property. The wives remaining apart for four months and ten days.

If any one else takes the wives, that person is liable to heavy fines; this crime is called "Nagdumal," and is a serious matter. Anything the husband gives his wives before his death is their own, and on death their "Mahari"[1] must be paid if it has not been paid.

If the eldest brother does not do his duty by the children of his brother the chiefs can take them and their property away and give them in trust to some one else. Children inherit at fifteen. On coming of age the property and its increase must be handed over.

The widows usually go back to their own children on the children coming of age.

Widows can marry again, but to a relative by marriage. If there are no relatives, then to one of her late husband's tribe.

Only small payments are made for a widow. Should she run away from the husband no great fines are exacted. Usually she is not divorced, simply left.

If no children are left, property goes to the nearest relative.

If there are no known relatives, the property is held in trust while inquiries are made, but the time of holding in trust is vague. If relatives appear after a long time, the case is usually referred to Somali Sheikhs and Cadis.

Minor assaults are punished by the offender having to provide food for fifteen to thirty people.

Assaults against women are more serious than against men. But if a man assaults his own female relatives it is regarded as a family matter.

Brothers pay for sisters who have assaulted persons. Brothers receive fines for assaults on sisters.

More serious assaults are punished, in the first case, by the chief tying the offender up or killing one of his cows; second case, tying up and killing three milk cows; third and subsequent cases by more tying up and killing cows. By tying up is meant suspending by the arms, which are tied behind the back, the feet being off the ground.

For serious assaults involving drawing blood or breaking limbs the chiefs as a preliminary kill three of the offender's milk cows, the case then goes to a chosen judge who deals out punishment according to the Sheriah; if the offender will not pay, cows are killed, and the fine taken by force.

The two worst insults are striking with a shoe or Kiboko. Of these the first is the worst, both may involve a whole tribe in fighting.

For the first, the punishment is three milk cows killed and four taken for the tribe; for the second, three milk cows killed and one taken for the tribe.

A man may, however, insult a tribe at a baraza,[2] but if the insulted headmen

[1] "Mahari," dowry.

[2] Council meeting.

repudiate him no notice is taken; but sometimes the young men get out of hand and take the law into their own hands, when there is a fight.

The punishment for theft of property is for the thief to return twice the value of the article stolen, and to be tied up.

If a man robs a woman and is caught in her house and is killed, nothing is said. But if he is not caught and there are no witnesses the supposed thief is cautioned. If caught in a house the punishment is four cows fine, being tied up, and warned if he goes back to try another theft he is to be killed.

Theft of a slave is punished by paying the value of the slave. If a slave steals, the correct procedure is to arrest him and inform his owner, who either pays or asks that he shall be killed, in which case the person whose goods were stolen kills him. If a slave is killed while stealing, the killer would have to pay the value of the slave. A second offence of theft by a slave is punished by death.

If one Somali kills another, an outside section not connected with either settles the matter, and the murderer's tribe is called on to pay blood money; if they cannot settle they fight.

If a Somali kills a man of a non-Somali tribe, if his tribe agree to pay blood money the matter is finished, if not fighting ensues.

If a Somali kills a Somali woman, blood money is paid, the blood money for a woman being half that for a man.

If a Galla or slave runs away with or strikes a Somali woman, he may be killed wherever met.

If a Somali kills a slave, he pays fifteen heifers.

The killing of non-Somalis is not regarded as an offence.

If the man and woman are caught together in a house both may be killed.

Rape of a slave woman is not regarded as an offence.

(R. E. Salkeld.)

Akikuyu.

Further acquaintance with Kikuyu custom generally confirms the scale of punishments set out on page 109 of Vol. I., though it is liable to variation in different localities. To the list already given the following should be added:

The punishment for rape is ten goats and two sheep; the latter to be given to the elders of the Kiama.

For theft from a shamba the thief must repay the value of the produce stolen and give two sheep to the elders of the Kiama.

A blow with a knobkerry is punishable by a fine of two sheep, of which one goes to the elders and one to the complainant.

If the actual murderer cannot be found, his brother is liable to pay half the blood money.

If A commits adultery with B, wife of C, and has a child by her, C has an action for damages against A assessed at thirteen goats (*i.e.* compensation of ten goats plus three formerly given to the elders). The child, however, belongs to A, though it remains with its mother till of age to be separated. If the child is a female, A has the right to give her in marriage. (Civil Case 60/07 D.C., N.R.B.)

If a man rapes an unmarried girl, he may be made to pay her marriage price and marry her.

The most binding form of oath is for a goat to be bound and beaten to death with a club, the operator meanwhile declaring "If I do wrong, say what is untrue, etc., may I die like this sengi."

Wagiriama.

On a wife leaving her husband and going to live with another man the "mahunda" or marriage price is repayable by her father.

If the mahunda consisted of cows, the number given would have to be returned even if the original cows had died in the meantime. But if the original cows had calves that lived the calves also would have to be returned. If, however, the calves, or some of them, died, those that died would not have to be replaced by others. It makes no difference whether the original cows were in calf or not at the time they were handed over.

It is for this reason presumably that bulls are more frequently given than cows. (Civil Case 51/09 A.D.C., Takanugu, and High Court C.A. 21/1909.)

The late Sir George William Des Vœux, G.C.M.G. — The editors are indebted to Mr. Wallwyn P. B. Shepheard for the following:

"Some notice in the Society's Journal seems due to the late Sir George William Des Vœux, who died on December 15, 1909, for his legislative work in the various Colonies whose government he was called upon to administer. After being called to the Bar of Upper Canada in 1861 and a short experience of actual practice Sir George William Des Vœux was in 1863 appointed a stipendiary magistrate in British Guiana. His experience as a magistrate for some six years in that Colony was of a character to try severely his qualifications for the post, but his judicial mind and temper never failed him in the administration of justice. He was promoted in 1869 to the post of Administrator and Colonial Secretary of St. Lucia, and it was during his term of office in that Colony that he personally, in association with the Chief Justice of St. Lucia, adapted the Civil Code of Canada for use in St. Lucia. When this work of collaboration was completed the St. Lucia Civil Code Ordinance of 1876 was passed, and in conformity with the provisions of this Ordinance, and by virtue of the Royal Proclamation of October 8, 1877, the Code prepared by G. W. Des Vœux, the Administrator of St. Lucia, and James Armstrong C.J., became the law of St. Lucia. This Code was followed by the Code of Civil Procedure.

"When some years afterwards the St. Lucia Statute Laws Revision Ordinance of 1887 was passed, a proviso was inserted that nothing therein contained should affect the validity of the Civil Code. As a Governor of this and other Crown Colonies he necessarily had to undertake the responsible work of drafting Ordinances as well as securing their passage through the local legislatures and the sanction of the Secretary of State for the Colonies.

"Between the years 1877 and 1879 Sir G. W. Des Vœux was acting Governor successively of Trinidad and Fiji, and after a short administration of the government of the Bahamas he was in 1880 appointed Governor of Fiji, then in 1886 Governor of Newfoundland, whence in 1887 he was transferred to Hong-Kong as Governor, and finally retired from the Colonial Service in 1891.

"Of the earlier life of the subject of this notice it may be seen from

his autobiography, published since his retirement, that he was educated at the Charterhouse School, whence he proceeded to Balliol College, Oxford. He left Oxford in order to enter upon colonial work, and without taking a degree proceeded to Canada; he graduated at the University of Toronto, where his legal studies enabled him to take up as voluntary subjects in his examination for the Bar the Institutes of Justinian, Civil Law, and Story's Commentaries on Equity, the Conflict of Laws, etc."

Kant's Project of Peace.—In the ever-increasing literature relating to the laws of war and peace, Dr. Samuel Mehamed's book on the *Theorie, Ursprung und Geschichte der Friedensidee* deserves attention. He brings out clearly the continuity of the appearance of projects for ensuring peace among the nations of Europe. The popular conception that Kant's tract *Zum Ewigen Frieden* stands by itself is proved to be erroneous. It was one of many publications with like objects or tendencies. In the eighteenth century Dr. Mehamed mentions some dates which have curious irony in them. In May 1790, the National Assembly proclaimed the abolition of war. In 1795 appeared Kant's project, in 1796 Baron Bourgoing's appeal, in 1797 Belderbuch's plan of peace for the Continent. In 1793 the Convention was passing resolutions about all nations forming one family; and the upshot was Napoleon, the Empire, and a long series of wars.

Unification of Law of Negotiable Instruments.—If the efforts which are now being made for the unification of the law as to bills of exchange, promissory notes, and cheques prove successful, this will be due to a large extent to the energetic efforts of Dr. Felix Meyer, one of the judges of the Berlin Court of Appeal (Kammergericht), who for several years has been most active in his attempts to popularise the scheme, and who, by his work on the comparative law of bills of exchange (*Das Weltwechselrecht*: Band 1, Die geltenden Wechselrechte in vergleichender Darstellung; Band 2, Entwurf eines einheitlichen Wechselgesetzes. Leipzig, 1909), has not only furthered the cause advocated by him, but also made a most valuable contribution to the science of comparative law. A notice of the work will follow in our next number.

Criminal law reform is in the air. The Austrian Government has issued the drafts of a new Criminal Code and a new Criminal Procedure Code, and the German Imperial Government are making active preparations in the same direction. In the meantime, a draft Code, prepared without Government aid, but published with Government sanction, has recently been issued. We propose to deal more fully with this matter in one of our next numbers.

The Hague Conferences on Private International Law.—Among the many interesting articles in the *Zeitschrift für Völkerrecht* of 1909 is an article by Professor Roszkowski of Lemberg, showing the chief conclusions of The Hague Conference of June 12, 1902, as to private international law, which have been too little noticed here. On that day twelve European States

signed three treaties as to the validity of marriage, divorce and separation, and guardianship of minors. The writer points out the deep influence which they must exercise over municipal law. In the same volume is an interesting article by the well-known American publicist, Dr. Reinach, as to the results of the three conferences of American States in 1889, 1901, and 1906. He disclaims the idea that these conferences conceal an attempt to establish a protectorate by the United States. But he is equally clear that they must end in great practical consequences.

Comparative Law in Blue-Books.—A memorandum (Cd. 4845, Eyre & Spottiswoode, 8*d.*) prepared for the information of the Chancellor of the Exchequer contains a statement of the law in regard to the taxation of land in Holland and Italy.

Two other blue-books may be mentioned, although they do not contain any statement of the law. The Committee upon the Organisation of Oriental Studies reported (Cd. 4560) upon the arrangements made in other European countries for their study, and the Royal Commission on Canals and Waterways have conducted an inquiry (Cd. 4841) upon the extension of that means of communication on the Continent.

Board of Trade and Uniform Law of Bills of Exchange.—The Advisory Committee on Commercial Intelligence of the Board of Trade report that a comparative statement has been prepared, showing the amount of the licence fees payable by the British commercial travellers in the principal foreign countries and British Possessions for which information was available. The Report (Cd. 4917, Eyre & Spottiswoode, 2*d.*) also refers to the proposed International Conference on the Laws relating to Bills of Exchange in the following terms:

"As a result of representations made to H.M. Government by the International Law Society, the Board of Trade in 1907 consulted the Institute of Bankers as to the desirability of steps being taken to endeavour to bring about the unification of the laws relating to bills of exchange. The Council of the Institute, in an elaborate memorandum received in July 1908, expressed the opinion that whilst any fundamental alteration in the general legal principles or customary usages underlying the existing law in the United Kingdom would not be acceptable either to the bankers or to the mercantile community of this country, many existing differences between the laws of various countries could be adjusted by international agreement.

"At their meeting on October 28, 1908, your Committee were informed that a proposal had been made by the Netherlands Government for an International Conference, and their opinion was invited as to the reply which should be given by H.M. Government. Your committee accordingly resolved that the memorandum prepared by the Council of the Institute of Bankers, together with the proposed International Rules recently prepared by the International Law Society at its conference at Buda-Pest, should

be communicated to such Chambers of Commerce and Trade and other Associations as were likely to be interested, with a request for their observations on both the general question and the specific suggestions contained in these documents.

"Replies were received from fourteen Associations and Chambers of Commerce, expressing concurrence in the proposal for international action and offering more or less detailed observations on the suggestions put before them. Your Committee, after considering these replies, came to the conclusion that whilst it is probable that grave difficulties would be encountered in any attempt to establish an International Code of Laws relating to Bills of Exchange, an authoritative statement, prepared by an International Conference, of the differences exisiting between the laws of different nations on this subject, and of the inconveniences arising therefrom, would be of value as a preliminary to the possible adjustment of points of difference by the various Governments concerned; and we accordingly reported to the Board of Trade in this sense."

The Law of Pledge.—One of the many proofs of the profitable exchange of services going on between English and Continental scholars in the realm of jurisprudence is afforded by the volume on the history of the English law of pledge prepared by Dr. Hazeltine of Cambridge, and forming part of Dr. Gierke's series, *Untersuchungen zur Deutsches Staats und Rechtsgeschichte.* No such history has hitherto existed, though, obviously, few parts of law have more interest for the economist and the lawyer. Dr. Hazeltine does not carry his narrative in all its fulness up to modern times, though in his sketch he is obliged to notice the general outlines of the development of English law. In the volume are many interesting episodes. Thus he turns aside to consider briefly the Anglo-Saxon form of marriage: He also glances at the *dos*, the *wittum*, the *dos nominata* and the *dos rationabilis* of the bride. He touches a multitude of matters which at first sight seem remote. But this is only a proof of the richness of his subject.

Sir Charles Lucas on Australasia.—Three months, as Sir Charles Lucas says, speaking of his recent trip to Australasia, is a very short time in which to form views on a continent; though if any one is capable of doing so, it is surely Sir Charles Lucas, with his lifelong study of our Colonies. But Sir Charles Lucas did not go to "report" upon Australia and New Zealand. His mission was to visit them in a friendly and unofficial way, and by personal intercourse and exchange of ideas to put the Colonial Office in touch with the feelings and views of the Australasian Governments and peoples—in Mr. Deakin's words, "to acquire a more intimate knowledge of the circumstances and conditions of the Colonies with whose business the Colonial Office has to deal." And admirably the experiment has succeeded. Sir Charles Lucas went out wondering, as he says, whether he would find the old distrust of "Downing Street"—as the personification of red tape and officialism—still remaining, and himself a "suspect." He was quickly reassured on landing by

the welcome he received. The jealousy of "Downing Street" was gone. It had died out with the grant of self-government and the growing consciousness of power and independence of Commonwealth and Dominion. It would never have existed, Sir Charles believes, if seventy years ago steam and electricity had been what they are to-day—if there had been, that is, the mutual understanding and sympathy which comes from quick, cheap, constant and regular inter-communication. "My visit to Australasia," says Sir Charles, "has impressed me more than ever with the overwhelming importance of scientific invention, both as regards the relations between the different parts of the British Empire and as regards the growth and filling out of each separate province or group of provinces. Australia is rightly said to be a land of great distances, but if the next century equals the last in discovery and development of scientific forces, what will distance amount to? It may in course of time be practically eliminated." Whatever bar distance has been in the past to dealings between Governments, it has, Sir Charles Lucas assures us, been no bar to the instinct of community of race. New Zealand seemed to him more British than Great Britain itself. The "bush," the "back-blocks" of a vast interior, may come to dominate the destiny of Australia, the sea that of New Zealand, but whatever instincts of special nationality may thus come to be developed, the essential qualities of the race—the energy, the enterprise, the love of justice and of ordered freedom—are there as strong as ever, and promise to remain so, as Sir Charles illustrates by many examples. Indeed he could detect less difference, he says, between Australians, New Zealanders, and home-bred Englishmen than between men from Lancashire, Yorkshire, and Devon. Such impressions as these which Sir Charles Lucas has given us in his "Note" are full of promise for the future of the Empire; and now that he has led the way we may hope that Mr. Deakin's suggestion will be realised by other as fruitful visits of a similar kind to other parts of our vast Dominions.

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